90-401

No.

Supreme Court, U.S.
FILED
AUG 13 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BETSEY WARREN LEBBOS
P.O. Box 40
New Almaden, Ca.
95042-0040

408-279-3100

August 13,1990

Petitioner Attorney
Pro Se

QUESTIONS PRESENTED

1. May a state, consistent with fundamental due process of law, suspend the right to practice law of an attorney by asserting that Full Faith and Credit or Comity may be applied to recognize a retaliatory, interim, ex parte act of a private volunteer of a California State Bar Association in a sister state, claiming to change automatic membership from active to inactive status in the trade group, when the attorney refused to swear oath to the California State Bar Association's claim that it has a private State Bar Court to license lawyers, and when she is not suspended in her home state ?

2. May Full Faith and Credit or Comity be applied to advisory, interlocutory, non-judicial recommendations

of a private volunteer of a California State Bar Association in a sister state ?

3. May the Full Faith and Credit clause or Comity specifying recognition of the " public acts, records, or judicial proceedings " of a sister state apply to the private acts of a private membership and privately-funded California State Bar Association ?

4. Is the application of the Full Faith and Credit Clause or Comity a matter of a court's discretion, or do the constitutional principles of non-recognition and non-Comity to sister state proceedings without notice or hearing or court action as stated by this Court in Griffin v. Griffin, 327 U.S. 220 (1946) a matter of controlling United States Constitutional

law ?

5. May a state suspend an attorney's license to practice law by refusing to decide the constitutional challenges that bar recognition of the out-of-state system ?

6. Is a state system where the state bar association claims it has created a private membership trade group court composed of private opponents and competitors, any one of whom may take the right to work of any lawyer without notice, grounds, proof, or hearing, and no admitting court action or the right to hear the claim that the private membership trade group court is unconstitutional and void, such a fatally defective system lacking in any due process of law, that neither Full Faith nor Comity may be applied by another state to recognize

it ?

7. May a state system be recognized in another state when it provides that a volunteer of an interested party may recommend disbarment when the attorney raises any constitutional issues, and then another volunteer may just ex parte enroll the attorney as an inactive member of the bar association ?

8. Based on this court's decision in Keller v. State Bar, 495 U.S.___, 110 L. Ed. 2d. 1, 110 S. Ct._____ overruling 767 P. 2d. 1020, 255 Cal. Rptr. 542, (June 4, 1990), did the Supreme Judicial Court of the Commonwealth of Massachusetts err in suspending their Court Officer by claiming to recognize the act of a California private non-lawyer volunteer of the California State Bar Association, without notice or hearing, purporting to change

the attorney's automatic state bar membership from active to inactive, while the attorney is not suspended in California nor has she been found guilty of any professional misconduct, and when the voidness of the alleged state bar court in which the volunteer claims to sit is never permitted to be decided ?

9. Does Full Faith and Credit or Comity apply to California statutes that claim the California State Bar Association's Board may create a State Bar Court and take their opponents'and competitors' right to work by enrolling them as inactive members of the state bar association ?

10. If state statutes are unconstitutional, does Full Faith or Comity apply ?

11. May a state adopt the reasoning of

Conway v. State Bar, 47 Cal.3d 1107 (February 21,1989), which was based on its now overruled reasoning in Keller v. State Bar, supra, and give it Full Faith and Credit or Comity in order to suspend an attorney's right to work in their state, and when no attorney in the United States is subject to such a private volunteer opponent system ?

12. Did the lower court err in that Conway v. State Bar, supra, did not address the United States Constitutional issues presented ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The
Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

DANIEL J. KLUCOCK, ESQ.
Bar Counsel
Board of Bar Overseers
Boston, Mass. 02110

TABLE OF AUTHORITIES

Cases

Arizona Grocery Co. v. Atchinson, T. and S.F.R. Co., 284 U.S. 370. 76 L. Ed. 348, 52 S. Ct. 183 — 37

Bradley v.Fisher, 13 Wall. 335, 20 L. Ed. 646 (1870) — 2,8

Conway vs.State Bar,47 Cal.3d 107 (February 21,1989) 32 — vi,10, 27,61 44,60

Coolidge v. New Hampshire, 403 U.S. 443, 441 — 48

Cummings v. Missouri, (1867) 71 U.S.(4 Wall.) 277 — 2,8

Ex Parte Garland, (1867) 71 U.S. (4 Wall.) 333 — 2,8

Ex Parte Robinson 19 Wall. 513 (1873) — 2,8

Gershenfield v. Justices of the Supreme Court of Pennsylvania (E.D.Pa. 1986) 641 F. Supp.1419, — 2,65 18,64

Gibson v. Berryhill 411 U.S. 524 (1973) — 2

Goldberg v. Kelly, (1970) 397 U.S. 254. — 2

Goldfarb v. Virginia State, 421 U.S. 776, 95 S. Ct. — 44

Griffin v. Griffin, 327 U.S. 220 (1946) ii,47

Hinds v. State Bar (1941) 119 P. 2d.134 34

Housworth v. Glisson, 485 F. Supp. (N.D. Ga.) 15

In re Cate, 270 P.969,273 P. 617 5

In re Malvin,(D.C.App. 1983) 466 A. 2d. 1220 19,65

Re: Matter of Betsey Warren Lebbos, ____Mass.___,___N.E. ___June 13, 1990 8,9

Keller v. State Bar of California 495 U.S.____, 110 L.Ed.2d.1, 110 S.Ct.____ June 4, 1990, overruling 255 Cal. Rptr. 542 (1989) iv,vi 1,9,31 33,35 45,53 60

Konigsberg vs. State Bar of California (1957), 353 US 252 2

Lebbos vs. Judges of the Santa Clara Superior Court, 883 F. 2d. 810 (Ninth Cir.) (1989) 22

Lebbos v. State Bar of Calif. 110 S. Ct. 335 (1989) 58

Middlesex County Ethics Com. v. Garden State Assoc. 102 S. Ct. 2525 (1982) 41

Minnesota v. Northern Securities Co.,198 U.S.48 33

Morgan v. United States (1936) 298 U.S. 468, 56 S. Ct. 906, 912, 80 L. Ed. 1288, 1295; 304 U.S.1; 58 S. Ct. 773, 82 L.Ed.1129 51

Norton v. Shelby County, 118 U.S. 45, 6 S. Ct.1121, 30 L. Ed.17 39,54

Patrick v. Burget 108 S.Ct.1658, 100 L.Ed.2d. 85, rehearing denied, 108 S.Ct.2921, 101 L. Ed. 2d 952 45

Schware vs. Board of Bar Examiners, (1957) 353 US 232,1 L.Ed. 2d 796, 77 S Ct. 752 2

Smithsonian v. St. John, 214 U.S. 19 46

Sullivan v. Sullivan, (1967) 64 Cal. Rptr. 82, 256 C.A. 2d. 301 48

Swift v. McPherson 232 US 51, 58 L.Ed. 499, 34 S. Ct. 239 37

Tambone v. Memorial Hospital for McHenry County, an Illinois Corporation, 635 F. Supp. 508 (N.D. Ill.) 45

Trustees of Dartmouth College v. Woodward (1819) 17 U.S. 518, 4 L. Ed. 629 56

United States v. Brown, 381 U.S. 367, 20 L. Ed. 672, 88 S. Ct. 1673, 55

reh. denied 393 U.S. 900, 21 L. Ed. 2d. 188, 89 S. Ct. 63

US Constitution, Amendment I 10

US Constitution, Amendment V 10

US Constitution, Article I, section 10, clause 1 11

US Constitution, Article IV, s. 2. 1 11

US Constitution, Article IV, section 2 11

US Constitution, Article IV. s. 1 15

US Constitution, Amendment XIV 11

Supreme Judicial Court Rule 4:01, s. 16 (1) 12,25 28,36

Ca. Constitution, Article III, section 3 34

Ca. Constitution, Article III, section 3.5 34

Ca. Constitution, Article VI, Section 1 43,45

Ca. Constitution, Article VI, Section 9 31,43 45

Statutory provisions :

15 U.S.C. section 1 12

California Supreme Judicial Court, Rule 29 59

California Business and Professions Code sections:

Section 6002	3
Section 6007 (c) (1)	25,52
Section 6086.5	41
Section 6125	6
Section 6126 (b)	6
Rules 789-799	25,53

TABLE OF CONTENTS

	Page
Questions Presented	i
List of Parties.....	vii
Introduction.....	1
Opinions below	8
Jurisdiction	9
Constitutional and Anti-Trust Provisions involved.....	10
Statement of the Case	14
Reasons for Granting the Writ.....	31
A. The Full Faith and Credit Clause and Comity do not apply to private acts	31
B. Full Faith and Credit and Comity do not apply to Interlocutory non-judicial claims	33
C. Full Faith and Credit or Comity do not apply to void entities	38
D. Full Faith and Credit or Comity should not apply to Courts not of Record	43
E. Full Faith and Credit and Comity do not apply to Orders issued without Notice or Hearing	46

F. Full Faith and Credit or Comity does not apply to orders based on the Ex Parte Hearsay of another 46

G. Full Faith and Credit and Comity does not apply to Unconstitutional state statutes 46

1. Void for vagueness and overbreadth 52

2. Unlawful Delegation of Public power to private persons 52

3. Bill of Attainder prohibitions 55

4. Impairment of Obligations of Contract and Due Process of law 56

H. May Full Faith and Credit be premised on Constitutionality of statutes by denial of Petitions without opinion ? 58

I. Full Faith and Credit may not Apply to Conway v. State Bar 60

J. The Judgment denies equal protection of State Law as it declines to apply its own rule to the Petitioner 61

K. Is not the Judgment void for failure to provide a prompt post-deprivation final adjudication ? 64

CONCLUSION 64

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Your Petitioner Attorney Betsey Warren Lebbos respectfully prays that this Court issue its Writ of Certiorari to resolve a conflict between this Court's holding in Keller v. State Bar of California 495 U.S. ____ , 110 L. Ed. 2d. 1, 110 S. Ct. ____ June 4,

1990, overruling 255 Cal. Rptr. 542 (1989), and prior decisions of this Court, (1) Gershenfield v. Justices of the Supreme Court of Pennsylvania (E.D.Pa. 1986) 641 F. Supp. 1419, and the decision of the Supreme Judicial Court of Massachusetts suspending the right of the Petitioner Attorney to practice law in that state solely on a claim of recognizing an ex parte act of a non-lawyer volunteer of a California State Bar Association, which act 18 months ago purports to change the attorney's automatic

---

(1) Ex Parte Robinson 19 Wall. 513 (1873); Ex Parte Garland 71 U.S. (4 Wall) 333; Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1870); Cummings v. Misssouri (1867) 71 U.S. (4 Wall.) 277: Konigsberg v. State Bar of California (1957) 353 US 252; Schware v. Board of Bar Examiners (1957) 353 US 232,1 L Ed. 2d. 796,77 S.Ct.752 ; Gibson v.Berryhill 411 U.S.564 (1973); Goldberg v. Kelly, (1970) 397 U.S.254.

membership status in the California State Bar Association membership from active to inactive, while the attorney has never been found culpable of any professional misconduct and is not suspended from the practice of law in California. (2)

(2) The California act was done Ex Parte by the non-lawyer volunteer after the Petitioner Attorney in disciplinary proceedings in California before an alleged State Bar Court refused to raise her hand and take an oath to the claimed State Bar Court or defend before it on the basis that it is unconstitutional and void, and was the agent of her party opponent in on-going civil litigation. A volunteer of the claimed State Bar Court recommended she be disbarred. Then a second volunteer ex parte merely copied the first volunteer's claims, said that was harm to his " Public," and enrolled her as an inactive member of the California State Bar Association Ex Parte. Appendix C:30. The California Supeme Court has declined review for 18 months and no hearing is scheduled. The California State Bar Association is now the Petitioner's judgment debtor on the case then pending against it. Lebbos v.State Bar, Sixth Appellate District Court, no. H003074.

Over 100 California attorneys have lost their careers through such solo action of a private lawyer or non-lawyer volunteer of the California Bar Association with no right to raise any constitutional, statutory, legal, evidenciary issues prior to deprivation of their businesses, careers, and clients' cases and contracts by such a volunteer. Like the Petitioner, they are not suspended nor found culpable of any misconduct. They are claimed to be denied their right to work by a bar volunteer for years. The California Supreme Court, since their Conway decision, supra, has denied hearing all Petitions without opinion. (3)

(3) The State Bar of California's " Lawyer Discipline in California," Progess Report for 1988 and 1989, reports at p. 30, 19 attorneys in 1987, 31 in 1988, 28, in 1989, were involuntarily enrolled as inactive (continued next page)

An attorney is re-enrolled as an active member of the state bar by another volunteer if the attorney takes an oath before the void State Bar Court and convinces the volun-

---

(3) (continued from preceding page)

members for " harm to the Public." Figures for 1990 now available show through July 12,1990, 28 more attorneys were involuntarily enrolled as inactive. Thus, it is projected the state bar is now doubling the number of attorneys, whose law practices they are taking through a volunteer, and unless this court intervenes, over 50 California attorneys will lose their careers this year alone at the hands of any one of these private trade group volunteers.

In the case of Attorney Jeryco Peterson, the attorney who claims to be the " Presiding Judge" of the alleged " State Bar Court" had him made inactive with no charges filed the week before Attorney Peterson was to try the case he has had pending against this claimed " Presiding Judge", who is just a lawyer, for five years for legal malpractice. May 27,1990 State Bar data; cross-reference to Parker et al. vs. Seibel, Contra Costa Superior Court, case no. 275894, Defendant L. Perlman.

teer the attorney's conduct no longer poses a threat of harm to the interests of the volunteer's " Public." Ca. Business and Professions Code Section 6007 (c), state bar rule 799. No Supreme Court action is required. Licensing is by the bar volunteer and not the licensing court. (4)

Your Petitioner Attorney refuses to take such an oath or submit herself to an alleged State Bar Court, as such a private membership, privately funded trade group court modeled on those of Communist China is unconstitutional, as herein described. Her

---

(4) Ca. Business and Professions Code section 6126 (b), as amended, makes it a crime to practice law if involuntarily enrolled as an inactive member of the California state bar. Section 6125 requires that all attorneys who pracice law must be active members of the state bar.

oath is to support the United States and State Constitutions.

Such a private membership, privately-funded trade group Court represents the destruction of all 29.1 million California citizens' rights to vote to create their own courts and elect and remove their own judges to their own courts, and their rights to " One Person, One Vote," and is the unlawful delegation of the Public power of the People to 23 private persons, as herein described.

This is the first time in our United States history a state has turned over Court Officer licensing to any one private lawyer or non-lawyer volunteer of a private membership state bar association composed of opponents and competitors of each other and allowed them to take each

other's right to work throughout the entire United States and for years. Appendix A and Appendix B.

Said Writ is requested to consider the limits of and the application of the Full Faith and Credit Clause of the United States Constitution and the limitations of the doctrine of Comity as applied to attorney licensing throughout the United States.

Petitioner requests this Court either decide the United States and State Constitutional issues the state court declined to decide, or reverse and remand the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts of June 13, 1990 in In re: Matter of Betsey Warren Lebbos, ------Mass.------, ----N.E.----June 13, 1990, for it to address, with this

Court's guidance, the serious United States and state Constitutional issues tendered.

I.

OPINIONS BELOW

The opinion of the Supreme Judicial Court In the Matter of Betsey Warren Lebbos, issued June 13, 1990, and appearing at ____Mass.___, ____ ____ N.E._____, , is attached hereto at Appendix A.

II.

JURISDICTION

The jurisdiction of this court is invoked under 27 U.S.C. s. 1257 and United States Supreme Court Rule 19 (a) where a state court has decided United States and out-of-state Constitutional issues contrary to the interpretation of this Court in Keller v. State Bar of California, Supra, and in

reliance on a California decision in Conway v. State Bar of California, 47 Cal. Rptr. 3d. 1107 (1989), which was issued two days before the California Supreme Court's now reversed Keller, supra, decision and in reliance on the same now reversed principles of law, which sought to assert the California State Bar Association is a governmental agency and not a private membership trade group, akin to a labor union.

III.

CONSTITUTIONAL AND SHERMAN ANTI-TRUST ACT PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Amendment 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V. No person shall be de-

prived of life, liberty, or property, without due process of law.

Amendment XIV. No state shall make or enforce any law which shall abridge the Privileges and Immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

Article I, s. 10, clause 1. No State shall pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts.

Article IV, s. 1. Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Article IV, s. 2. 1. The Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several states.

Article IV, s. 2: This Constitution, and the laws of the United States which shall be made in pursuance thereof..shall be the supreme Law of the Land; and the judges in every state shall be bound there by, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

THE SHERMAN ANTI-TRUST ACT

15 U.S.C. section 1

Every contract, combination, in the form of Trust, or otherwise, or conspiracy in restraint of Trade or Commerce among the several states, is declared to be illegal.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT RULE 4:01
BAR DISCIPLINE

Section 16. Reciprocal Discipline

(1) Upon receipt of a certified copy of an order that an attorney is suspended or disbarred from the practice of law in another jurisdiction (including any Federal Court and any State or Federal administrative body or tribunal) this court shall issue a notice directed to the respondent-attorney containing a) a copy of the order of the other jurisdiction; and b) an order directing that the respondent-attorney inform the court within thirty days from service of the notice of any claim by him that the imposition of identical discipline in this Commonwealth would be unwarranted and the reasons therefor. The Bar Counsel shall cause this notice to be served in hand upon the respondent-attorney....

(3) Upon the expiration of thirty days from service of the notice under subsection (1) above, the court, after

hearing, may enter such order as the facts brought to the attention may justify and in any event, may impose the identical discipline unless the Bar Counsel or the respondent-attorney establishes, or the court concludes that (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard; b) there was significant infirmity of proof establishing the misconduct; c) imposition of the same discipline would result in grave injustice; or d) the misconduct does not justify the same discipline in this Commonwealth.

(4) upon receipt of a certified copy of an order that an attorney admitted to practice in this Commonwealth has been subjected to public discipline other than suspension or disbarment in another jurisdiction ... the Board of Bar Overseers and the Clerk of this Court for Suffolk County shall file it and make it available to the public to the extent that the record of any other public disciplinary proceeding would be made available.

(5) A final adjudication in another jurisdiction that an attorney has been found guilty of misconduct may be treated as establishing that misconduct for purposes of a disciplinary proceeding in the Commonwealth.

The California Constitutional provisions, statutes, and state bar's

rules are set forth in this Petition.

IV.

STATEMENT OF THE CASE

Petitioner attorney is a duly licensed attorney for 19 years. She was admitted to practice law by the Supreme Judicial Court of the Commonwealth of Massachusetts in 1971, and by the California Supreme Court in 1975. She has no client complaints, no disciplinary record, and no malpractice.

She brings this Petition in which she assserts that a judgment of suspension in the Commowealth of Massachusetts " pending completion of disciplinary proceedings " in the State of California violates the Full Faith and Credit Clause of the United States Constitution and principles of Comity and deny her fundamental

due process of law and her right to earn a living and practice law.

She contends that Article IV, Section 1 of the United States Constitution concerning a state recognizing the " Public Acts, Records, and Judicial proceedings " of a sister state does not authorize a state, in its discretion, to extend recognition to the private, uncertified Ex Parte act of a private non-lawyer volunteer of a California Bar Association claiming to enroll the attorney as an inactive member of the California State Bar Association.

She further claims that a state court's rule which provides under " Reciprocal Discipline " that a court may impose identical discipline to that rendered in a sister state upon receipt of a certified copy

of an order of suspension may not be constitutionally changed to include alleged orders, other than suspensions, issued not by the admitting and licensing court in the sister state, but by a non-lawyer volunteer of a California State Bar Association claiming to change the automatic membership of a California attorney from active to inactive in the California State Bar Association.

She further contends that Full Faith and Credit or Comity may not be applied to interlocutory, advisory claims when there is no final, binding, and conclusive adjudication by any court of law of the veracity or validity of any claims of any professional misconduct.

She further claims that the

California system which permits a non-lawyer or a lawyer volunteer of a California State Bar Association, with no procedural or substantive due process protections, to claim to take the right to work of any California attorney in fifteen days, is so fatally defective in notice, hearing, competency, grounds, denial of rights to cross-examination, cross-examination, right to raise and have decided constitutional claims, and right to action and decision on such claims and the law by the admitting and licensing court, that the California system may not be recognized in another state and is void for denial to California attorneys of fundamental procedural and substantive due process of law.

She further contends that the

decision in Gershenfield v. Justices, supra, which indicated that not even the admitting and licensing court could " suspend " an attorney without post-deprivation adjudication of the merits within six months, applies to void the California's volunteer's ex parte involuntary inactive enrollment entered 18 months ago, and when there has not been and may never be any final adjudication in the State of California.

She also asks this court to adopt the standard approved in In re: Malvin (D.C. App. 1983) 466 A. 2d. 1220, that only imminent, substantial and immediate great harm authorizes any temporary suspension and solely by the licensing court, that it is reserved for exceptional cases, is an extreme measure, and is not available in a

routine disciplinary case and never used to prevent adjudications of unconstitutionality of bar procedures or in retaliation for exercise of constitutional rights. She asks that the California involuntary inactive enrollment statute be declared void for failure to comply with this requisite exigent and competency of court standard of In re Malvin, Supra.

A. Facts

On June 13, 1990, the Supreme Judicial Court of the Commonwealth of Massachusetts in their written decision at ___ Mass.___, ____N.E. ____ , Appendix A, suspended Petitioner's right to practice law in the Commonwealth of Massachusetts pending completion of disciplinary proceedings in the State of California.

The order of suspension was based

solely on a claim to Full Faith and Credit under the United States Constitution and the Supreme Judicial Court's rule entitled, " Recriprocal Discipline " which only applies to final adjudications in a sister state. Appendix A, p. 5.

The decision gives Full Faith and Credit to an " order of a California state bar association." Appendix C. The order is not of suspension, but of alleged involuntary inactive enrollment as a member of the California State Bar Association and was issued by one of its non-lawyer volunteers one and one half years ago on February 14, 1989. Appendix C-32. It was issued by it in the middle of the California proceedings.

In 1986, on a pending civil suit, the California State Bar Association

had an Ex Parte Judgment entered of $ 32,676 against the Petitioner. The Petitioner, upon discovery of the $ 32,676 judgment, promptly moved to set aside the judgment for State Bar fraud. This was finally done on May 11, 1989 by the State Court of Appeals. Lebbos v.State Bar of California, Sixth Appellate District Court, docket no H003074. A second suit was filed in 1988 concerning the California State Bar's refusal to act on known embezzlements by an attorney who was a court-appointed trustee. The Trustee was criminally convicted of embezzlement and sentenced to four years in state prison May 1, 1990.

Thus, at all times material hereto, the California State Bar Association was the opposing counsel and party in

on-going civil litigation filed and prosecuted against them by the Petitioner Attorney.

Thus, the California State Bar Association brought charges against their opposing counsel and party in 1988 to prevent her prevailing against them. They brought the charges of her other opposing counsel and party in Lebbos v. Judges, 883 F.2d. 810 (Ninth) (1989) in exchange for obtaining votes from them for their dues. They filed them before an entity they claim to have created called " The State Bar Court." Appendix B.

The Petitioner appeared specially and refused to take an oath to testify or defend before the alleged State Bar Court on the basis it was unconstitutional and void and was and is the

agent of her opposing party and counsel.

She then filed with the California Supreme Court to void the alleged State Bar Court. The volunteer of the alleged State Bar Court, who was 83 and senile, then recommended she be disbarred. Then another volunteer, a non-lawyer, on February 14,1989, claimed to Ex Parte enroll the Petitioner as an inactive member of the California State Bar Association.

A Petition to the California Supreme Court was denied as premature. All resulting petitions have been denied without opinion for one and one half years. February 14, 1990, one year to the day of the ex parte inactivity, they issued their own Writ. Since then, they have posted no brief-

ing schedules and have scheduled no hearing. It is unlikely any hearing will be held before 1992, as three of the seven Justices have resigned in the last 14 months for non-health related reasons, and there is an overwhelming backlog of death penalty cases.

The statutory complex delegating to the California State Bar Association the licensing of California lawyers provides any non-lawyer or lawyer volunteer, with or without notice or hearing, charges, grounds, and with no right to any review of any constitutional, evidenciary, or legal challenges, and no admitting court action, may immediately take the right to work of any California attorney for any reason and have the attorney arrested and imprisoned the next day.

Section 6007, Section 6125, Section 6126 (b), State Bar rules, 789-799.

On September 8, 1989 the California State Bar Association lodged with the Supreme Judicial Court of the Commonwealth of Massachusetts their claimed " order" of Involuntary Inactive Enrollment. Appendix 1.

The Supreme Judicial Court then issued their Order on the Petitioner, stating, " On the foregoing Order of the State Bar of California filed September 8,1989, it is ordered that the * give notice to the said respondent, Betsey Warren Lebbos, under S.J.C. Rule 4:01, s. 16 (1), directing her to inform the Court within thirty days of the service of this order of Notice why the imposition of the identical discipline imposed in

the State Bar of California, if imposed in the Commonwealth of Massachusetts would be unwarranted." Appendix E.

Petitioner filed a Motion to Dismiss on the basis that a) a state may not recognize the act of a private volunteer of a private bar association, b) bar associations can not issue " orders," c) there was no identical discipline to impose as the attorney had not been disciplined or suspended, d) the United States Constitution does not permit licensing of Court officers by a private membership trade group non-lawyer volunteer e) a volunteer unilaterally changing membership in their trade group from active to inactive is not a "suspension," f) the private act was not subject to any recognition because

it was interlocutory, g) Opponents and competitors can not license each other, h) The California State Bar was disqualified as her judgment debtor, i) the California State Bar's claim to having a private State Bar Court is unconstitutional, j) California's involuntary inactive enrollment statute is unconstitutional, and k) the California Supreme Court's decision in Conway v. State Bar, supra did not address the unconstitutionality of the claimed State Bar Court, the Sherman Anti-Trust Act, and the United States' Constitutional issues, which now needed to be addressed.

The Petitioner submitted briefs on the Sherman Anti-Trust Act and the unconstitutionality, both under the California State Constitution and

the United States Constitution, of the statute delegating to the 23 private member board of the California State Bar association, the power to create a privately-funded and run private " State Bar Court " to replace the admitting State Supreme Court and the separate statute and rules claiming the State Bar licenses California attorneys by unilaterally and ex parte involuntarily enrolling them as an inactive member of the California State Bar Association.

On December 13,1989, the Honorable Justice Nolan of the Supreme Judicial Court of the Commonwealth of Massachusetts for the County of Suffolk entered a Judgment. Appendix C. Based on a claim to reciprocal discipline under Supreme Judicial Court Rule 4:01, Section 16 (1), the Court

recognized the alleged State Bar Court and asserted that involuntary transfer to inactive status on a finding that the attorney's conduct poses a substantial threat of harm to the public or her clients by a volunteer of the California State Bar Association is a " suspension," ordered that the Petitioner be suspended from the practice of law pending final disposition of disciplinary proceedings pending in the Supreme Court of the State of California. Appendix C.

In fact, nowhere in the record is there any mention of any harm to any client. The compensated referee of the alleged state bar court's Ex Parte order solely refers to harm to his " Public" (emphasis added) as his grounds for ex parte

inactive State Bar membership. Appendix C: 30.

On June 13, 1989 the Supreme Judicial Court of the Commonwealth of Massachusetts affirmed this Judgment. Said Judgment indicates the state court has interpreted the Full faith and Credit clause to extend to private acts of a private non-lawyer volunteer of a trade group, that its rule requiring certified copies of orders of suspension may be deleted or changed, that denial of the right to work is a discretionary act, that interlocutory claims of a volunteer of a trade group are " final adjudications of misconduct " for purposes of their reciprocal discipline rule, that a suspension may issue without addressing the constitutional issues or the facts and the exceptions

accorded by the rule. Appendix A.

V.

REASONS FOR GRANTING THE WRIT

A.

THE FULL FAITH AND CREDIT CLAUSE AND COMITY DO NOT APPLY TO PRIVATE ACTS

The United States Constitution requires recognition of the "public acts records, and judicial proceedings" of a sister state. Art. IV, s. 1, US Consti. This court stated in Keller v. State Bar, supra, the California State Bar Association is a privately funded, private membership group, akin to a labor union, and not a governmental agency, for Federal question purposes.

The California Constitution states attorneys admitted to practice law are members of the Bar Association, which is a "public corporation". Art. 6, s. 9, Ca. Consti. The private

members contend the clause violates the United States Constitution, as they can not be forced to be automatic members of a unit of state government and forced to be an arm of the state in order to work. The State Bar contends their denomination as a " public corporation " makes them part of the government in power, and private attorneys may be forced to be part of the government.

As Appendix C indicates, the judgment below is based on recognition of an alleged " order of the California State Bar Association," and not any order of suspension by the Petitioner's admitting Supreme Court. Appendix A and B.

Are not the holdings that corporate records and private acts are not recognizable under the Full Faith

and Credit clause, as expressed in Minnesota v. Northern Securities Co., 198 U.S. 48, controlling and this court's ruling in Keller v. State Bar, supra, controlling to void Massachusetts' recognition of a private act of a private non-lawyer volunteer of a private State Bar Association ?

B.

FULL FAITH AND CREDIT AND COMITY DO NOT APPLY TO INTERLOCUTORY NON-JUDICIAL CLAIMS

The judgment acknowledges that the California State Bar Association's alleged order of " inactive membership " was entered after a hearing by it, but before review and before the entry of any actual findings of misconduct and an order of the admitting and licensing California Supreme Court. Appendix A. As Keller v. State Bar, supra, points out, the state

bar's role is solely advisory to the California Supreme Court concerning findings and recommended discipline. California law provides that the California Supreme Court undertakes De Novo review of the evidence and makes its own findings, which are the only legally cognizable findings ever made. Hinds v. State Bar (1941) 119 P. 2d 134, sections 6077 and 6078. The California Supreme Court is the only body empowered to decide any law issues and the state bar is not permitted to decide any constitutional issues, such as the voidness of the State Bar Court. In re: Cate 270 P. 969, 273 P. 617, Article 3, sections 3 and 3.5, Ca. Constitution.

The judgment below is in conflict. It acknowledges the claimed inactivity was done by a bar associa-

tion volunteer in the middle of proceedings and that completion of proceedings is still pending in the California Supreme Court. Appendix A. It acknowledges that the bar's claims of misconduct are interlocutory only. Although it claims an appeal is pending with the California Supreme Court, but state law provides review of the State Bar is not an appeal as the State Bar enters no orders and makes no judgments, but solely issues recommendations to the California Supreme Court, it is clear that it acknowledges the alleged findings of misconduct are by someone in the Bar Association copying the alleged findings of his fellow Bar Association person and not the final findings and decision of the admitting court. Keller v. State Bar, supra.

Then it claims that the state bar's " hearing panel's referee's " claims are a " final adjudication of professional misconduct," when they are not a final adjudication of those claims in the sister state. Appendix A. The judgment states, " Section 16 permits a final adjudication of misconduct, made in a another jurisdiction, to be treated as establishing that misconduct for our purposes."

Since there is obviously no final adjudication of any misconduct in California, just claims of an interested Bar debtor referee, who was a non-lawyer, just copying the claims of a fellow referee, and the Full Faith and Credit clause and Comity only apply to the binding, conclusive, and final decisions of real courts of law as to the merits

adjudicated, is not the judgment void for denying the Petitioner due process of law ? Since interlocutory or administrative claims have been held to not be entitled to full faith and credit, Arizona Grocery Co. v. Atchinson, T. and S.F.R. Co., 284 U.S. 370, 76 L. Ed. 348, 52 S. Ct. 183, and Swift v. McPherson 232 US 51, 58 L. Ed. 499, 34 S. Ct. 239, does not the judgment deny the Petitioner due process of law by asserting such claims are interlocutory claims but are entitled to discretionary recognition so as to suspend the right to work of an attorney ?

Since an attorney has a protected property interest in their professional reputation, their business, their clients, and their right to work, is not due process violated by a state

depriving an attorney of their right to work through nation-wide published claims of professional misconduct based solely on the ex parte hearsay of a non-lawyer volunteer of a private membership trade group which is the attorney's judgment debtor ?

C.

FULL FAITH AND CREDIT OR COMITY DO NOT APPLY TO VOID ENTITIES

The judgment being affirmed by the Supreme Judicial Court alleged there was a State Bar Court that was being recognized. Appendix B. The full court's judgment did not refer to it, but claimed someone, not identified, placed the attorney on " inactive" status. Appendix A. It then claims that the attorney's constitutional claims need not be decided.

This Court has held that an un-

unconstitutional Court is void and is entitled to no recognition. Norton v. Shelby County, 118 U.S. 454,6 S. Ct. 1121, 30 L. Ed. 178. Although the existence of a state court is a matter of state law, but the state has, thus far, refused to decide the unconstitutionality of the alleged state bar court, is not a sister state obliged to determine that state law when a determination of deprivation of right to work turns on that interpretation ? Further, when the issue is whether a court is void for denial of " One Person, One Vote," or for unlawful delegation of the public power to create a court to private persons, United States Constitutional issues, is not the sister state obliged to address those issues prior to deprivation of right to

work on a claim of recognition of the alleged state bar court ?

Your Petitioner presented to the Supreme Judicial Court of the Commonwealth of Massachusetts the voidness of the alleged State Bar Court of the California State Bar Association under both the State and United States Constitutions and the Sherman Anti-Trust Act, yet they suspended her by indicating they need not address these constitutional issues. Appendix A.

Since the attorneys' defense is that she can not lose her right to work throughout the United States with her valid licenses to practice law at the hands of a void non-admitting and private competitor and opponent trade group court volunteer, and it is null and void, and she can not be forced to

swear oath to a void court in order to work, the refusal of the court below to address the Constitutional claims denies her fundamental due process of law. See Middlesex County Ethics Comm. v. Garden State Assoc. 102 S. Ct. 2515, (1982) where abstention does not apply to state disciplinary procedures which afford no opportunity to raise and have determined constitutional challenges prior to a taking of the right to work. (5)

Since the California Courts have declined to rule on the unconstitutionality of the alleged State Bar Court, and, a sister state appears to be obliged to interpret state and United States Constitutional provi-

(5) Section 6086.5 in 1988 provided, " The Board (of Governors of the State Bar Association) may create committees
(continued next page)

sions which have not been interpreted by the sister state when confronted with an issue whether to take the liberty, property, or contracts of their own Court Officer, and Massachuetts also now declines to rule, it is proper and appropriate for this Court to assume jurisdiction and finally void the alleged State Bar Court of the State Bar of California, instead of your Petitioner Attorney and over a hundred other California attorneys

---

(5) to be known as the State Bar Court. " In 1988 this was amended to " The Board shall create a State Bar Court." The Board is 23 private persons. 17 are lawyers. 6 are lay persons chosen by the Governor, Assembly, and Senate.16 lawyers are chosen from 9 Bar Districts. But some districts have 5000 lawyers with one vote, the same as another district with 1,000. The 17th lawyer is chosen from a group createed and financed by the State Bar, The California Young Lawyers Association. Thus, lawyers under 35 have 2 votes while older lawyers have one or none.

never being allowed to work, solely because they support the Constitutions of the United States and of the State of California, which outlaw private opponent and competitor courts modeled on Chinese Communism. (6)

D.

FULL FAITH AND CREDIT OR COMITY SHOULD NOT APPLY TO COURTS NOT OF RECORD

The judgment belows recites that the Supreme Court's rule is based on receipt of a certified copy of an or-

---

(6) The State Bar Court of the State Bar of California is void under the California Constitution, in addition to its voidness under the United States Constitution. Art.6, sec. 1 of the California Constitution lists the only permitted courts and has no legislative authority to create any new ones. Art.6, sec. 9 of the California Constitution lists the California State Bar as a corporation. All California case law has always held the legislature could create no courts or give any judicial power to any entity. Refer to the dissent of (continued next page)

der of suspension. It then recites that " an order has been entered in California involuntarily transferring the attorney to an 'inactive status'." It fails to state there is no Court order. It fails to state that the inactivity is in state bar membership and not licensing by the State Sup-

---

(6)
Justice Kaufman in Conway v. State Bar, supra. Also, the doctrine of separation of powers of Art.3, Sec. 3 of the California Constitution voids the state legislature trying to create a private attorney licensing court run by its creation, the State Bar. Refer to the dissent of Justice Kaufman in Conway v. State Bar supra.

In addition, the Sherman Anti-Trust Act, which is applicable to Bar Associations, appears to void this private opponent and competitor court as a combination and conspiracy in restraint of the trade and commerce of their own opponents and competitors, which is not subject to the Parker Doctrine as the anti-competitive effect is not state policy nor is it supervised by the State. Goldfarb v. Virginia State Bar, 421 U.S.776, 95 S.
(continued next page)

reme Court. It, however, acknowledges that the alleged order is not certified nor is it a suspension, which under California state law, requires an order issued by the attorney's licensing court, and not by any other entity. Keller v. State Bar, Supra.

The California Constitution list the only courts of record. Art. 6, sec. 1, Ca. Constitution. The provisions of Art. 6, sec. 9 concerning the state bar being a public corporation has no provision for it having any records. State law only permits the State Bar to have minutes,

---

(6) (continued from preceding page)

Ct. 2004 (1975), at p. 2017; Patrick v. Burget, U.S. 1988, 108 S.Ct. 1658, 100 L. Ed. 2d. 83, rehearing denied, 108 S.Ct. 2921, 101 L.Ed. 2d. 952, on remand, 852 F. 2d. 1241; Tambone v. Memorial Hospital for McHenry County, an Illinois Corporation, 635 F. Supp. 508 (N.D. Ill.)

transcripts, and recommendations for the California Supreme Court. It is not entitled to have any other records and has no self-certifying authority for itself or its claimed State Bar Court. Section 6080. In addition, the State Bar has exempted itself from all State law. Section 6001.

The question then becomes whether prior holdings of this Court indicating that alleged courts that are not courts of record are not entitled to Full Faith and Credit are still controlling ? Refer Smithsonian v. St. John, 214 U.S.19.

E.

FULL FAITH AND CREDIT AND COMITY DO NOT APPLY TO ORDERS ISSUED WITHOUT NOTICE OR HEARING

Since the judgment recited that, " the attorney's various challenges to the constitutionality of the procedure

in California need not be reassessed and decided here," does not this violate the express ruling of this Court in Griffin v. Griffin, 327 U.S. 220 (1946), that neither Full Faith and Credit nor Comity apply to state proceedings that deny procedural due process of law, even when those procedures are sanctioned by state law ?

The judgment recites that although notice was sent to the attorney, she did not appear." The " order of the State Bar" they claim to recognize recites that " Notice was filed and served upon Respondent in the time, form, and manner specified by Rule 791 of the Rules of Procedure of the State Bar Court.." Appendix C-1. That Rule, however, contradicts the applicable State Law, Section 6002. State law required notice by certified

mail with a return receipt. Section 6002. The rule of the State Bar Court permits merely mail notice by certified mail with no receipt.

Both state law and the United States Constitutional due process clause prohibit service by a party or prosecutor. Sullivan v. Sullivan, (1967) 64 Cal. Rptr. 82, 256 C.A. 2d. 301, Coolidge v. New Hampshire, 403 U.S. 443, 441. Yet the claimed mail notice was sent by the prosecutor. Refer Bar Counsel Brief.

The rule of the alleged State Bar Court permits an order being entered with no service and within 15 days of a claim of mailing by a prosecutor and with no hearing. State Bar Rules 791-792. A waiver of a hearing is presumed by non-receipt and by not requesting that a hearing previously set be held

within ten days of an alleged mailing. Appendix C-1. The volunteer may then enter Ex Parte an immediate order enrolling the attorney as an inactive member of the State Bar with no notice and no hearing and on different and distinct grounds from any disciplinary proceeding or no grounds within 15 days of the prosecutor claiming he mailed a letter without receipt or proof of mailing or of receipt. This, in fact, is what occurred to the Petitioner- no notice and no hearing. Appendix p. C-1. The judgment acknowledges there was no hearing." The hearing panel referee, relying on the findings in the disbarment proceeding, ordered that the attorney involuntarily be placed on inactive status." However, there are no hearing panels. There is just one non-lawyer volun-

teer. Appendix C- 32 (L.J. Dewald, Compensated Referee). The judgment also misstated the alleged order as the alleged order states, " Order for Involuntary Enrollment " - " It is the order of the undersigned that Respondent..be enrolled as an inactive member (of the State Bar Association).

The question then is whether the Judgment which recited that constitutional issues need not be addressed violates the holding of this court in Griffin v. Griffin, supra, that a proceeding without notice or hearing is unconstitutional and void.

F.

FULL FAITH AND CREDIT OR COMITY DOES NOT APPLY TO ORDERS BASED ON THE EX PARTE HEARSAY OF ANOTHER

The judgment states, " The hearing panel referee, relying on the findings in the disbarment proceeding, or-

dered that the attorney involuntarily be placed on inactive status." As discussed infra, there are no findings until they are made by the California Supreme Court, since private persons are not empowered to determine law or constitutional issues.

This Court has held that when an order is made based on the recommendation of another by one not in attendance at the hearings and he has no transcript of what actually transpired at the prior proceeding, but relies on the hearsay of others, this is void as denying fundamental due process of law. Morgan v. United States (1936) 298 U.S.468, 56 S.Ct.906, 912, 80 L.Ed.1288, 1295; 304 U.S.1, 58 S. Ct. 773, 82 L. Ed. 1129.

Thus, the judgment's acknowledgement that the second volunteer just

copied what the first volunteer claimed as a basis of Full Faith and Credit to the latter's claims admits that the order is void. Thus, the judgment's refusal to address this constitutional defect as voiding the proceedings denied the attorney due process of law.

G.

FfULL FAITH AND CREDIT DOES NOT APPLY TO UNCONSTITUTIONAL STATE STATUTES

1. Void for vagueness and overbreadth

California's involuntary inactive enrollment statute which appears at section 6007 (c) authorizes the California State Bar association to enroll an attorney as an inactive member of their Bar Association upon a finding that the attorney's " conduct poses a substantial threat of harm to the interests of clients or the Public."

The State Bar's implementing rules permit a non-lawyer or lawyer volunteer to define his threat, his substantial, his harm, his interests and his public or clients, with or without notice or hearing. State Bar rules of procedure, rules 789-798. Thus, although this Court in Keller v. State Bar, supra, held that the ethical codes for attorneys are established by the California Supreme Court, California attorneys lose their right to work, not for violating their own code established by their admitting court, but by the legislature letting its creation, the State Bar, take any of its members' rights to work for not violating the Code, but for vague, subjective, and nebulous " threats " of " harm " to " interests " of a volunteer's subjective " Public,"

which involve no violations of any Rules of Conduct. The attorney presented to the court below the unconstitutional application of this standard to her case. However, the court held it would consider no challenges. Since an almost identical standard was held unconstitutional for vagueness and overbreadth in Housworth v. Glisson, 485 F. Supp. 29, (N.D.Ga.) should not the same standard now be voided in attorney licensing ? Norton v. Shelby County, supra.

2. Unlawful Delegation of Public power to private persons

Since rule 100 of the State Bar Court provides that its members are lawyers and non-lawyers appointed by the 23 member board of the State Bar, and the State Bar is a privately-funded, private membership group, do not

this court's rulings concerning a denial of due process occurring by reason of state statutes which delegate to private persons public power to take liberty and property apply to void California's statutory complex allowing any private volunteer to take careers ?

3. Bill of Attainder prohibitions

Similar to statutes which prevented a class of persons from occupying positions in a labor union, California's involuntary inactive statute, with the State Bar rules, allow the legislature to determine guilt, target solely California lawyers to be subject to loss of their right to work and their careers for harm to a volunteer's " public's interests," and allow this loss of right to work with no judicial action or process. United

States v. Brown, 381 U.S. 367, 20 L. Ed. 672, 88 S.Ct.1673, reh. denied 393 U.S. 900, 21 L. Ed. 2d. 188, 89 S.Ct. 63. Are not these statutes unconstitutional Bills of Attainder ?

4. Impairment of Obligations of Contract and Due Process of law

Although moribund for many years due to the concept of the police power, Article 1, section 10 of the United States Constitution does not permit states to pass laws impairing the obligation of contracts. Is not California's scheme similar to that held invalid in Trustees of Dartmouth College v. Woodward (1819) 17 U.S. 518, 4 L. Ed. 629 where the non-licensing's contract with its licensee was held to prevent a state legislature voiding that contract ? While licensing agencies may alter their own

contracts with their licensee under the police power, may a third branch of government that does not license lawyers do so without notice and abort the Court officers' contracts with their own clients and with their ad-admitting court without notice and action by the attorney's licensing court ?

The serious due process issue that was believed to be resolved by this Court's decisions in Ex Parte Garland, supra, Ex Parte Robinson, Bradley v. Fisher, supra, and Cummins v. Missouri, supra, has now resurrected itself with the first attempt in the United States to claim that a Court Officer is not licensed by her admitting court, but by the legislature deciding it desires its creation, a California State Bar

association, and private opponents and competitors in it to license each other.

H.

MAY FULL FAITH AND CREDIT BE PREMISED ON CONSTITUTIONALITY OF STATUTES BY DENIAL OF PETITIONS WITHOUT OPINION ?

The judgment below asserted that this Court's denial of Petition in Lebbos v. State Bar of Calif., 110 S. Ct. 335 (1989) entitled the Court, in its discretion, to conclude that because this Court and the California Supreme Court rejected the attorney's challenge to her " temporary suspension " pending a final appellate decision on her disbarment, that parallel temporary suspension is warranted in Massachusetts," and that constitutional challenges need not be considered.

Since there is no temporary suspension, the premise itself is false. There is no California valid entity that has issued anything. Suspension requires due process rights while Involuntary inactive California State Bar membership has none. It is axiomatic that denial of a Petition by this Court is no expression of the law or the merits. California has the same statement that denial of a Petition by its Supreme Court is no expression of opinion either. Advisory Comment, California Supreme Court rule 29.

It would appear, as a matter of first impression, that Massachusetts erred in ruling it need not decide the tendered Constitutional issues, because this Court and the California Supreme Court did not do so, as a determination of those issues was a

precondition to entering a valid order.

I.

FULL FAITH AND CREDIT MAY NOT APPLY TO CONWAY V. STATE BAR

The judgment relies on the California Supreme Court's decision in Conway v. State Bar, Supra. Appendix A. That decision, made two days before its Keller decision, now reversed by this Court, was clearly based on the same premises involved in its decision in Keller v. State Bar, supra. The California Supreme Court believes that the legislature may create the California State Bar Association into a governmental agency and transfer vested Attorney licensing from the Judicial branch of government to the Legislative branch, who may delegate it to its creation, the California State

Bar Association. An extremely serious constitutional crisis has resulted.

This Court should review the Conway, supra, decision and hold that it did not decide the constitutional issues presented herein, and to the extent it is claimed to do so, it is unconstitutional for failure to provide basic due process of law.

J.

THE JUDGMENT DENIES EQUAL PROTECTION OF STATE LAW AS IT DECLINES TO APPLY ITS OWN RULE TO THE PETITIONER

As the judgment points out, the Massachusetts Reciprocal Discipline rule required that there be a certified copy of an order of suspension. Appendix A. Yet, a suspension was entered with no such certified copy of an order of suspension. The Massachusetts rule also states that identical

discipline may be imposed. Yet there is no discipline to reciprocate. As applied to these facts, an identical order would be to enroll the attorney as an inactive member of the Massachusetts Bar Association. The Massachusetts rule also stated that the attorney could show that no discipline should be imposed when there was not a reasonable notice and opportunity to be heard, when there was a significant infirmity of proof, when grave injustice would occur, and when the misconduct would not warrant the same discipline in Massachusetts. Appendix A.

Although the judgment claims notice, but fails to address that mail notice from a prosecutor without receipt is not proper notice, it does acknowledge no hearing was held and

the referee merely copied what his fellow referee claimed and made the order based solely on that. Further, the attorney did tender how no proof had ever been presented in support of any charges and that they were unconstitutional, Reply Brief, p. 5-20, and how no discipline could be imposed in Massachusetts for freedom or speech, yet the judgment states, " We shall not recite the findings on the various charges of disciplinary misconduct, nor shall we become involved in the attorney's challenges to those findings. " (emphasis added)

Does not the refusal of the court to apply its own rule to the Petitioner deny her the equal protection of state law ?

K.

IS NOT THE JUDGMENT VOID FOR FAILURE TO PROVIDE A PROMPT POST-DEPRIVATION FINAL ADJUDICATION ?

In Gershenfeld v. Justices of the Supreme Court of Pennsylvania, supra, the Court held that even the admitting and licensing court could not enter an emergency suspension order without a prompt post-deprivation hearing due to the substantial investment of the attorney in his career. The Court stated due process is violated with a delay of more than six months. In the instant case, the denial has been for 18 months. Appendix C-33. Petitioner requests that the " inactivity" be voided due to failure to afford a prompt, post-deprivation final ruling.

CONCLUSION

This Petition requests this Court void and vacate the Massachusetts Jud-

gment of suspension on the basis that the Full Faith and Credit Clause and Comity do not permit a claim that a private non-lawyer volunteer of a California Bar Association suspends lawyers nor does it apply to interlocutory claims of such a volunteer, and to establish that Due Process of law for attorneys requires recognition of only the admitting court's final judgments and that any interim suspension by it must comply with the requirement of both In re Malvin, supra, and Gerhenfield v. Justices, supra. Over 100 California attorneys have lost their careers through these California defective procedures, and they deserve protection by this Court with minimum due process of law.

RESPECTFULLY SUBMITTED,

BETSEY WARREN LEBBOS

BETSEY WARREN LEBBOS
PETITIONER/ ATTORNEY

No._____

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

BETSEY WARREN LEBBOS,
Petitioner

v.

JPREME JUDICIAL COURT OF THE
)MMONWEALTH OF MASSACHUSETTS
Respondent

PETITIONERS' APPENDIX

BETSEY WARREN LEBBOS
Petitioner/ Attorney
P.O. Box 40
New Almaden , Ca.
95042-0040

(408) 279-3100

Petitioner Attorney
Pro Se

BEST AVAILABLE COPY

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK : SS SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. 89-42 BD

IN RE; BETSEY WARREN LEBBOS

This matter came before the court, Nolan, J. Presiding, on the order of notice issued in accordance with Supreme Judicial Court Rule 4:Ø1, Section 16 (1), including a determination of the State Bar Court that Respondent be involuntarily transferred to an inactive status on the finding that her conduct poses a substantial threat of harm to the the public or her clients, and was argued by Respondent pro se and by Bar Counsel, and after hearing it appearing that the imposition of the identical discipline in this Commonwealth is warranted.

THEREFORE, it is ORDERED and adjudged that the Respondent be suspend-

judged that the Respondent be suspend-
from the practice of law in the
Commonwealth of Massachusetts pend-
ing final disposition of disciplin-
ary proceedings pending in the Supreme
Court of the State of California.

By the Court (Nolan,J)

GENE E. SLYVA

Assistant Clerk
Supreme Judicial Court
for Suffolk County

December 13, 1989

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS. Supreme Judicial Court
for Suffolk County
No. 89-42BD

On the foregoing Order of the State Bar of California filed September 8, 1989 it is ordered that the ... give notice to the said respondent, Betsey Warren Lebbs, under S.J.C. Rule 4: 01, s. 16(1), directing her to inform the Court within thirty (30) days of the service of this Order of Notice why the imposition of the identical discipline imposed in the State Bar of California, if imposed in the Commonwealth of Massachusetts would be unwarranted, by serving her with an attested copy of said Order of the State Bar of California filed and of this order forth-

with.

By the Court (Nolan, J.)

Assistant Clerk

GENE E. SLYVA

A true copy of said Order of the State Bar of California and order.

Attest,

Assistant Clerk,

GENE E. SLYVA

Appendix C-2

(2)

90-401

Supreme Court, U.S.
FILED
AUG 13 1990
JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

BETSEY WARREN LEBBOS,

Petitioner

v.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

PETITIONER'S SUPPLEMENTAL APPENDIX

BETSEY WARREN LEBBOS
Petitioner/ Attorney
P.O. Box 40
New Almaden , Ca.
95042-0040

(408) 279-3100

Petitioner Attorney
Pro Se

80

Table of Contents

APPENDIX C	Attachment to Order on Order of the State Bar of California, Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts	3
JUDICIAL NOTICE		C-5
FINDINGS OF FACT, SERVICE		C-6
COUNT ONE		C-6
COUNT TWO		C-10
COUNT THREE		C-15
COUNT FOUR		C-19
COUNT FIVE		C-27
COUNT SIX		C-36
COUNT SEVEN		C-53
COUNT EIGHT		C-59

COUNT NINE C-67

CONCLUSIONS OF LAW C-68

SUSBTANTIAL THREAT OF HARM C-73

ORDER FOR INACTIVE ENROLLMENT C-77

Table of Authorities

Cases :

In re: Nevill, (1985) 39 C. 3d.729, 735 — C-76

Ca. Business and Professions Code :

Section 6007 (c) — C-73

Section 6068 (a) — C-6,C-19 C-69

Section 6068 (b) — C-6, C-70

Section 6068 (c) — C-69

Section 6068 (d) — C-19,C-70

Section 6068 (f) — C-19,C-36 C-70

Section 6068 (g) — C-70

Section 6068 (i) — C-19

Section 6103 — C-6,C-15 C-19,C-70

Section 6106 — C-6,C-15 C-19,C-71

Section 6068 (d) — C-6

Rule of Professional Conduct :

Rule 7-105	**C-15,C-19 C-72**
Rule 1-110	**C-71**

State bar rules of Procedure :

Rule 790	**C-4**
Rule 791	**C-3, C-4**
Rule 792	**C-4**
Rule 793	**C-4**
Rule 794	**C-73**

STATE BAR COURT

STATE BAR OF CALIFORNIA

In the matter of

BETSEY WARREN LEBBOS

A member of the State Bar

CASE NO. 89-TE-10035

/

The above matter relates to proceedings re involuntary transfer to an inactive status upon a Finding that the attorney's conduct poses a substantial threat of harm to the public or to the attorney's clients. It was heard before LINUS J. DEWALD, a Compensated Referee.

Notice of these proceedings was filed and served upon Respondent in the time, form, and manner specified by Rule 791 of the Rules of Procedure of the State Bar Court, and the verified

application was thereafter promptly submitted to a referee designated pursuant to rule 790.

Respondent did not file with the Office of the Clerk, State Bar Court, within ten (10) days from the date of service of the application by certified mail any verified response and request that the hearing which has been set pursuant to rule 791 be held.

Upon the expiration of the said ten (10) day period prescribed by rule 792, the undersigned Compensated Referee has determined under Rule 793 of the Rules of Procedure of the State Bar that said hearing shall not be held because :

1. The Respondent has not requested a hearing in the time and manner

provided by said Rules, and

2. The Office of Trial Counsel has not requested a hearing in the time and manner provided by said Rules, and

3. The undersigned designated Referee has determined that the previously set hearing will not materially contribute to the decision on the involuntary inactive enrollment application.

JUDICIAL NOTICE

At the request of the Examiner herein and in accordance with Evidence Code Sec. 452, this court takes judicial notice of the Decision of the Matter of Betsey Warren Lebbos, State Bar Court, # 86-0-17453, filed January 9, 1989, and attached to the Request for Judicial Notice and accompanying the

Application for Inactive Enrollment filed January 19,1989.

FINDINGS OF FACT, SERVICE

The Respondent, BETSEY WARREN LEBBOS, was given notice of these proceedings pursuant to Rule 791 of the Rules of Procedure of the State Bar.

COUNT ONE: FINDINGS OF FACT UNDER B & P. CODE SEC. 6007 (c) (2)

This count charges Respondent with conduct alleged to be in violation of Business and Professions Code sections 6068 (a), 6103, and 6106, also Rule 8-101 (A) of the Bar Rules of Professional Conduct.

1. The Respondent represented Robert L. Miller in a damage claim. She received a draft dated December 27,1986, payable to Robert L. Miller and Beth Lebbos in the sum of $ 2,500.00 from

the California State Automobile Association in settlement of her client's claim. (State Bar, Ex. 1)

2. Respondent did not have a trust account and has admitted that she did not use trust accounts for client's funds. (State Bar, Ex. 15, page 13). Instead, she deposited the draft in a personal account that she had with a San Jose branch of the California First National Bank. (State Bar Ex. 3, and testimony of Thomas Johnson, a bank officer.) Banks have a hold period on both out of state checks and drafts deposited in an account, but drafts take longer to clear. (Testimony of Thomas Johnson).

3. Client Miller received a check from Respondent dated February 6, 1986, in the sum of $ 1,587, the net recovery

to which he was entitled. (State Bar Ex. 2.)

4. At the time the draft was deposited, Respondent maintained two accounts with said bank. One was her checking account, and the other was designed as a " reserve account."

5. When Respondent deposited the draft in the Miller case, she endorsed it " Pay to the Order of Cash Reserve." She thus indicated that it was not to be deposited in her checking account and that the funds on payment of the draft were to be maintained in the reserve account. During the period in question, the balance in her checking account dropped below $ 0.00. (State Bar, Ex,. 3, and testimony of Thomas Johnson.)

The bank records indicate that at

all times material hereto however, there would have been adequate funds in the cash reserve account to pay Miller his $ 1,587.00 if the bank, as directed, had properly kept the draft on deposit in the reserve account.

In fact, when Miller's check cleared on February 11, 1986, there was, according to Respondent's own admission, a surplus of over $ 3000. 00 consisting of other personal funds in her cash reserve account.

But, if Respondent were to have paid Miller his $ 1,587. 00 before the draft cleared, it would have obviously had to have been from her own personal funds. A lawyer is not required to pay a client's claims against others out of the lawyer's own funds.

6. Regardless of whether the said

draft was deposited in either of Respondent's two accounts with the bank, the checking account or cash reserve account, it would nevertheless have been deposited in an account in which it was conmingled with Respondent's personal funds.

COUNT TWO: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with fraudulently altering a Court Order in violation of Business and Professions Code sections 6068(a), 6068 (d), 6103 and 6106, also Rule 7-105 (1) of the State Bar Rules of Professional Conduct.

1. The Respondent represented the father in a family law case in the Santa Clara County Superior County entitled Reginald Rhedrick, petitioner

v. Mila Opera Rhedrick, respondent, Case No. 629057. Attorney Bradford Baugh represented the mother therein.

2. The charge in the Notice to Show Cause is that Respondent altered a Court Order. Respondent asserted no Court Order was actuallly filed, and that in any event she did not alter it.

3. At the culpability hearing, Respondent cross-examined State Bar witnesses, but did not testify herself or call any witness on her own behalf.

4. A hearing involving custody of the two minor children of the parties was held before Commissioner Kittle on June 8, 1987. (State Bar, Ex. 5)

On June 9, 1987, Baugh, pursuant to Rule 17-A-11 of the local rules for

the Santa Clara Superior Court sent Respondent a letter enclosing a form of stipulation and a proposed Order which he asked her to approve and sign so that he could submit it to Commissioner Kittle. (State Bar, Ex. 6)

Baugh received no reply from Respondent. On June 12, 1987 Baugh write Respondent a second letter indicating that because he had not heard from Respondent, Baugh intended to submit the proposed Order, together with Baugh's correspondence with Respondent, to Commissioner Kittle on June 15, 1987. Baugh 's letter also advised Respondent to contact Commissioner Kittle directly if Respondent had any objections to having Baugh's Order signed by Commissioner Kittle.

5. A meeting between both counsel and

Commissioner Kittle was held on June 15, 1987, to discuss their respective differences as to the contents of the proposed Order. Thereafter, Commissioner Kittle signed and filed a document entitled " TEMPORARY ORDERS AFTER HEARING ." That Order included four minor handwritten changes appearing on pages 1 and 2. It was not, however, approved as to form by Respondent. (State Bar, Ex. 10)

6. Previously, on June 12, 1987, Respondent had filed a motion to modify the June 8th Order . Baugh was served with the original motion consisting only of pages 1 to 7. No temporary Order was attached.

After the above mentioned June 15 th meeting, Respondent filed and served the same motion with an altered

version of the June 15 Order. This time the motion had attached to it what was represented by Respondent to be Commissioner Kittle's Order of June 15, 1987.

It differed from the genuine Order signed by Commissioner Kittle in that significant changes, including the crossing out of some of its key provisions, were made in handwriting on page 3 of the altered document. Baugh identified the handwriting on the last page as that of Respondent Lebbos.

7. A certified copy of the afore-mentioned altered Order is State Bar, Exhibit 20, in evidence (See also State Bar, Ex. 11 and Respondent's Exhibit II.)

8. There was a further hearing in the Rhedrick case on June 22, 1987 on Res-

pondent 's motion to reconsider the June 8, 1987 Order. At that time Baugh brought to the Court's attention the alteration of the Order.

9. At the culpability hearing herein, Respondent, in cross-examining Comissioner Kittle, falsely and without foundation accused Commission Kittle of placing the altered Order in the filed. At such hearing, Respondent also made the same false and groundless accusation against Baugh.

COUNT THREE: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with concealing assets in violation of Business and Professions Code sections 6068 (a), 6068 (d), 6103 and 6106, also Rule 7-105 (1) of the State Bar Rules of Professional Conduct.

1. On or about December 21, 1984, in Lebbos v. Wooten, Linda Wooten obtained a judgment against Respondent in the amount of $ 51,000.00. On or about June 6, 1986, pursuant to Order of Examination, Respondent's deposition was taken in that case.

2. At such deposition, Respondent was questioned repeatedly whether she had billed clients, including Martha McCutcheon, a client in a trial that was scheduled to start the following Tuesday. Respondent testified that Respondent had not yet determined what to bill McCutcheon. (State Bar, Ex. 15, R.T. p 63, 1. 22 to pg. 64,1.28). Respondent also testified at that time that Respondent billed clients at the end of each case (State Bar, Ex. 15 at pg. 1 23 to pg. 1. 18.)

Respondent's said testimony was false because on June 4, 1986, two days before the said deposition, Respondent had prepared and sent to McCutcheon itemized bill for $ 1642. 50 . (State Bar, Ex. 18 and 19, and testimony of McCutcheon.)

3. At the culpability hearing, Respondent did not offer corrections to the said Deposition transcript, nor did Respondent offer testimony to rebut any of the statements appearing the said transcript.

4. At said Deposition, Respondent also testified that Respondent owned no stocks or bonds (State Bar, Ex. 15, pg. 36, l. 12-15). Such testimony was false because Respondent had $ 2019.98 in an E.F. Hutton account.

5. Respondent's said deposition tes-

timony that there were no funds owing to Respondent from any person was false in that one Alan Munn held in trust for Respondent at least $ 3653. (State Bar, Ex. 16, pg. 4, L. 10-13; Ex. 17, Schedule B-3.)

6. Respondent's own documentary evidence also substantiates the concealment charge. (Respondent's Ex. VVVV, a transcript on appeal of the hearing in July and September, 1986, before Judge Rushing in Lebbos v. Wooten.)

It includes reference to the discovery of covert bank accounts, here and in Florida. (Page 50, L. 17 to page 51, L. 6; page 56, L. 5-19) Also another contingent asset Respondent concealed was Respondent's pending personal injury action in Federal Court.

COUNT FOUR : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with improper conduct in three court incidents in violation of Business and Professions Code 6068 (a), (b), (d), (f), and (i), 6103 and 6106, also Rule 7-105 (1) of the State Bar Rules of Professional Conduct.

1. In or about February, 1987, Respondent became attorney for Sat Sandhir, the husband in the family law case of In re Sandhir.

2. The gravamen of Count four is that in or about April, 1987, Respondent made a series of false and defamatory accusations in an attempt to disqualify Judge James Stewart from hearing the case. The statements originally appeared in Respondent's Notice of

Disqualification for Cause and supporting Points and Authorities filed with the Court on Feb.15, 1987 (State Bar, Ex. 21)

While the motion was signed by Sandhir only, Respondent signed the supporting Points and Authorities as attorney for Sandhir.

3. The concluding paragraph of the Points and Authorities includes the following statement:

" It's clear one would reasonably entertain a doubt that Judge Stewart or any of his colleagues who wish to support his retention as a judge would be fair to Respondent or his children. They have been pawns of a bad Court too long. "

4. Judge Stewart filed a verified answer to the motion to disqualify

him, attaching to his answer an original Reporter's transcript of the proceedings in his Court pertaining to the case. Such transcript demonstrates the falsity of various allegations of Respondent's said motion. (State Bar, Ex. 21)

5. As a specific example of such falsity, Respondent had asserted that on May 7, 1987, Judge Stewart sent Sandhir home, then made an ex parte Order granting attorney fees to Janet Syphers, the opposing attorney in the Sandhir case. (State Bar, Ex. 21, pg. 2, L. 7-19)

Said Transcript shows that, to the contrary, Judge Stewart informed Sandhir that he should remain for other matters. (State Bar, Ex. 22, R.T. pg. 3, L. 14-17 and pg. 4, L. 13-16). Al-

so, Janet Syphers did not send Sandhir home.

6. At the hearing herein, Respondent refused to identify the factual basis for the charges against Judge Stewart. Respondent did not act in good faith when she filed said motion and supporting documents containing containing false statements.

7. Also in count 4, paragraph 3 therein charges that in the Sandhir case:

a. Respondent received a document entitled " Stipulation and Order " prepared by and signed by both opposing counsel and her client.

b. That Respondent altered said document without the consent or knowledge of such opposing counsel, and

c. That Respondent submitted such

altered document to the Court without informing the Court that the alterations were made without opposing counsel's consent.

8. Respondent received such Stipulation on or about March 24, 1987 with a cover letter from opposing counsel Janet Syphers. The letter recited that there was some urgency in handling the matter, so that the Sandhir child could return home from a hospital and asked Respondent to call Syphers when Respondent and Respondent 's client had signed the stipulation. (State Bar, Ex. 26, Ex. A). Respondent did not make the requested call.

At the hearing herein, Respondent asserted, without foundation, that the parties has reached an earlier agree-

ment signed as to the terms of the stipulation, that the tendered stipulation and Order was inconsistent therewith, and that Respondent altered it make it confirm to such alleged earlier agreement. Such assertion is untrue.

Following such alteration, Respondent filed the document with the Court on March 25, 1987. (State Bar, Ex. 25)

9. In her letter of April 16, 1987 to Judge Fogel, Respondent admitted that, unknown to Syphers, Respondent unilaterally altered the document. (State Bar, Ex. 27). In the last paragraph of such letter on page 3, Respondent states:

" I never spoke to Janet Syphers. His daughter had to be released that day from the mental hospi-

Exhibit C-23

tal, or go through another probable cause hearing and another fourteen days. I saw Syphers had sought to add things. I crossed them out, leaving the parties' true agreement intact."

Further, in the June 12, 1987 hearing before Judge Fogel, Respondent testified :

" I crossed out her surplus. That stipulation is word for word and that is Miss Sharma's relatives, who have told me exactly what the parties agreed to. " (State Bar, Ex. 19, R.T. pg. 19, L. 13-16).

10. At the hearing herein, Respondent asserted, without foundation, that such document entitled " Stipulation and Order " was not a stipulation. To

the contrary, Respondent intended that the said family court understand the document to include a stipulation, and that the court should rely on such understanding and act thereon. (Evidence Code, Sec. 623)

11. On March 11, 19877, the day after Respondent had received, altered such document and sent it to the court, Janet Syphers phoned Respondent. In the conversation, Respondent did not tell Syphers what Respondent had done. Respondent stated only that Respondent wished to make changes in the stipulation. Syphers objected to any change.

Respondent did not serve Syphers with a copy of the altered document. Syphers became aware of the alteration on April 1, 1987 only because of a chance meeting with Respondent at the

Court house. (State Bar, Ex. 26)

12. In the Sandhir matter, Judge Fogel found in his findings and Order after hearing that:

> " Attorney Lebbos specifically acknowledged making the deletions without notice to Attorney Syphers both in her pleadings and in open Court. " (State Bar, Ex. 30,L. 22-24)

13. When asked by the State Bar to explain her conduct in the Sandhir case, Respondent sent a letter dated August 12,1987, which stated, in part, " The Court acknowledged I made no alteration." (State Bar Ex. 32, 33)

14. The quoted statement in Respondent 's letter of August 12 th is both false and premature. Judge Fogel did not issue his decision until August

21, 1987. (State Bar, Ex. 30).

Neither does such decision exonerate Respondent. To the contrary, such decision reads, in part:

" Altering a stipulation and causing it to be presented to the Court without notice to opposing counsel are actions that strike at the heart of the judicial process. In a normal case such actions are properly a basis for sanctions, contempt proceedings, or both. The present case, however, must be viewed in a larger context."
(Pg. 14, L. 6-11).

It goes on to speak of her long experience as a family law lawyer who " at times has made thoughtful and constructive suggestions for improving

judicial practices and legislative policy." (Pg.4, L. 12-17). It then concludes that a punitive action by the Court would only serve a short term basis, and that:

" The Court is convinced that a meaningful response to Attorney Lebbos' ongoing conduct is the responsibility of the State Bar of California .(State Bar, Ex. 30, pg. 5, L. 8-12f.)

Such language is not that of exoneration as to the specific charge of unauthorized alteration of the document in question.

COUNT FIVE : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with improper conduct in connection with appearance s before Judge Franklin

Elia.

1. On March 25, 1987, Judge Elia recused himself from the Serrano case in which Respondent was involved, stating :

> " The Court declares a mistrial in the case and I disqualify myself from hearing any other evidence on it." (State Bar, Ex.40,R.T. pg. 10, L. 4-5)

The following day, March 26, 1987 Respondent sent a letter addressed to three judges of the Family Court, including Judge Elia, which concluded with the statement :

> " Should these comments offend you,I ask that you voluntarily disqualify yourself for cause from any of the cases in which I may appear for my clients and

their children." (State Bar, Ex. 42, pg. 2)

Thereafter, on April 7, 1987, Judge Elia issued an Order in the Krage case disqualifying himself from all of Respondent's cases. (Respondent 's Ex. UU). In the first paragraph of a nine-page letter addressed to Judge Elia and dated April 17, 1897, Respondent acknowledged that she was,

" ...in receipt of your Order attempting to disqualify yourself from any case in which I am counsel for either party, which was given to me April 9, 1987, when I appeared ready to argue the Krage matter. "

2. Because Judge Elia had recused himself, a pending motion to reconsider an Order by Judge Elia in the Krage

case was assigned to Judge Fogel for hearing. Respondent object to the re-assignment, correctly, because under C.C.P. Sec. 1008 such a motion must be heard by the same judge who made the original Order. (Respondent's Ex. FFF, pg. 7, L. 16 to pg. 8, L. 8) Accordingly, the matter was reassigned to Judge Elia for hearing on April 28, 1987. Respondent's Exhibit JJJ is a transcript of such hearing.

Respondent argues that at such hearing Judge Elia rescinded his Order recused himself from all of the cases, relying on the following quotation:

" The Court: First of all, if you wish to waive the bias issue, I will hear only the issue of... that was presented to the Court at the hearing that we had. I am

willing to do that. With respect to stating grounds for bias in any further cases, I am willing to do that on a case by case basis. " (Ex.JJJ, pg. 5, L. 13-18)

Respondent did not quote what the judge said earlier in the proceeding:

" There is a request by you, Ms. Lebbos, that the Court actually hear this case.I find that I really should not be doing that, and I am wondering if you wish to waive the bias that would be involved, possibly involved. (Ex. JJ, pg. 3, L.7-10d.)

Respondent did not quote what the judge said later in the proceedings.

" The Court : Well, when you are forcing me and I will state for

the record why I'm refusing to hear any of your cases, Mrs. Lebbos." (Ex. JJJ, Pg. 8, L. 9-11).

Respondent also failed to quote another statement :

" The Court : Your conduct is outrageous and insulting, madam. That is why you are not to appear in my court ever again. I have recused myself. I will continue to recuse myself. " (Emphasis added).

Respondent had clear notice that Judge Stewart 's Order of April 7, 1987, recusing himself from all of Respondent's cases was never rescinded.

3. Despite such knowledge, Respondent appeared in Judge Elia's Courtroom

with clients on two occasions, and refused to leave the Courtroom when asked, (State Bar, Ex. 44 and 45) Respondent made several other disruptive appearances in Judge Elia 's Courtroom. (State Bar, Ex. 46 ; testimony of Judge Elia)

4. In the Silvia matter (State Bar, Ex.44) Respondent was attorney for Deanna Silvia. Respondent told Silvia the matter would be heard before Judge Elia on April 7,1987, and indicated that Respondent had a favorable relationship with Judge Elia. Respondent did not tell Silvia of Respondent's March 26, 1987 letter asking Judge Elia to disqualify himself from all of Respondent's cases.

When Respondent and Silvia arrived at Judge Elia's courtroom on April 7,

1987, the court was not yet in session so they seated themselves in the court room.

Judge Elia became aware of their presence, and dircted the bailiff to instruct Respondent to leave the court room. The bailiff did so. Respondent replied loudly, calling the judge an " asshole," and stated that it was a public courtroom and that Respondent has a right to remain. At the time, in addition to Court attaches, there were about 20-25 spectators in the courtroom.

Thereafter, Respondent refused to budge for about 15 minutes. She finally left when Judge Elia took the bench and personally ordered her out. That Respondent so intended to remain in defiance of the court's Orders is

manifested by Respondent 's request to Attorney Harold F. Alphonse to join her in remaining there so that " we can aggravate him." Attorney Alfonse refused to aid and abet Respondent's conduct. (Respondent's Ex. VV)

5. At the culpability hearing, Respondent asserted, without foundation, that she really went to Judge Elia's courtroom because it was necessary to go there to obtain a mediation slip. To the contrary, such slips could be obtained in any Court department. A clerk would hand them out upon request. In addition, Silvia testified that, during the incident, Respondent never requested such a slip.

6. Respondent's attempt to excuse her profanity on the basis of the attor-

ney - client privilege is frivolous : (1) Respondent's defamation of Judge Elia was said in the presence of third persons and 2) the privilege is that of the client, not the attorney.

COUNT SIX : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with offensive behavior in 1986 and 1987 in violation of B. & P. Code Sec. 6068 (f).

1. On or about Sep. 14, 1986, Respondent directed a letter to Santa Clara Superior Court Judge Komar asserting that the Santa Clara Superior Court is dirty and fails to follow lawful procedures. (State Bar, Ex. 52, pg. 2) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral

or documentary evidence supporting her assertion.

2. On or about September 19, 1986, Respondent filed with the Santa Clara Superior Court a document in support of her motion to disqualify Judge Komar from hearing Lebbos v. Wooten. That document stated, in part:

" It is possible there are a few judges in the county who will be fair to me. There are some who understand due process of law and want proper procedures, notices, hearings and orders issued, and the " Old Boy Club " Ex-Parte-ing opposing counsel to death with improper orders who will be sent back to live in another county less sophisticated than Santa Clara Superior Court County."

(State Bar, Ex. 53, pg. 5, L. 16-

21).

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her implied assertion that some judges in Santa Clara County engage in such misconduct.

3. In a statement of Financial Affairs in connection with Respondent's Chapter 11 Bankruptcy, Petitioner asserted that Petitioner's law practice was terminated July 15, 1986 by " Ex Parte " Order of Judge Conrad Rushing- an illegal Order on a debt pending appeal, bankrupting practice and debtor. " (State Bar, Ex. 17; see also Ex. 53, pg. 5, L. 10-15).

At the disciplinary hearing before

this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

4. On or about Feb. 17, 1987, Respondent asserted that Judge James Stewart is incapable of understanding his oath of office, that he is reckless,that he is deliberately destroying a child's life, and that he is racially biased. (State Bar, Ex. 54) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

5. On or about April 14, 1987, Respondent asserted that Judge Stewart meddles beyond human decency, that he is bigoted, and that court attache Baron is a flunky. (State Bar, Ex. 54, pg. 2.) At the disciplinary hear-

ing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

6. On or about April 16, 1987, Respondent directed a letter to Santa Clara Superior Court Judge Fogel. Respondent circulated copies of a letter to various people. The letter contained assertions concerning Judge Fogel, Stewart, Judge Elia and Rushing. Respondent asserted that they play " politics," and that Judge Fogel will assist in a fraud if he were to sign certain tendered Court documents or hold a hearing in the Sandhir matter.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or docu-

mentary evidence supporting her assertion.

7. On or about August 18,1987, Respondent directed a letter to the State Bar referencing Respondent's letter of August 7, 1987. Respondent asserted that Judge Stewart issued fraudulent Ex Parte Orders, that he disobeyed the law, and that he almost caused the death of the Sandhir child. Respondent also knowledge of Family law by Judges Fogel, Elia and Stewart who sit on the Court." (State Bar, Ex. 71)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

8. On or about November 25, 1987, in

the family law clerk's office, and in the presence of other court officials, litigants and attorneys, Respondent called Judge Stewart a " swine." (Testimony of David Cerra and John MacKenzie.) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

9. On or about October 19, 1987, in In re Kemp, Respondent filed documents in connection with a motion to disqualify Judge Thomas Black. In the documents, Respondent asserted (1) that Judge Black would be inclined to favor petitioner Kemp, (2) that Judge Black had ex parte communications with Mr. Kemp, (3) that Judge Black retained the case out of prejudice, (4) that

Judge Black acted out of sex discrimination, (5) that Judge Black was neither reasonable nor impartial, and (6) that Judge Black gave favors to Mr. Kemp (State Bar, Ex. 56, C, H)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

10. On or about November 25,1987, Respondent was found to be in contempt of Court in the Webber matter. In a hearing before Judge Stewart, Respondent had persistently ignored the judge's warning that he was not going to permit her to use his Court " as a forum to express her personal views." The adjudication of contempt was a final adjudication.

11. On or about August 10, 1987, in documents filed in Marriage of Jones, Respondent asserted that Martha Olson, Court-appointed counsel for the Jones children, had told Respondent's client that she, Olson, had been abused as a child. Respondent also referred to Judge Elia as a victim of child abuse. The latter sought the removal of the court-appointed attorney and was intended to invoke proceedings for a change of attorney for such children. (State Bar, Ex. 69)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

12. On or about August 10,1987, in documents filed in Marriage of Jones,

Respondent accused Attorney Martha Olson of disbarable conduct, fraud, and perjury. (State Bar, Ex. 69)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

13. On or about Feb. 12, 1988, Respondent wrote to Commissioner Kittle in connection with ongoing litigation between Jeradlin Spradlin (as Conservator of the Estate of Alan Munn) and Respondent and her client, Citizens for a Review Board. (State Bar, Ex. 66, 68) In the letter,Respondent referred to a matter known as the Bittle embezzlement, Respondent accused Commissioner Kittle (1) of botching the matter, (2) failing to

perform her official duties,(3) being " involved in the worst scandal and criminal embezzlement imaginable " by failing to act properly, and (4) participating in a criminal conspiracy. (State Bar, Ex. 58, 66, 68.)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

14. On or about Feb. 12, 1988, Respondent wrote to Santa Clara Superior Court Presiding Judge Peter Stone. Respondent referred to a matter known as the Bittle embezzlement. In the document, Respondent accused Judge Stewart, Judge Fogel, Commissioner Kittle of (1) " gross bungling " in the matter, (2) causing the embezzle-

ment, and (3) being accessories to the crime. It also asserted that (1) they belong in prison, and (2) that they are not Court Officers, but rather " four stooges in drag. "

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

15. On or about Feb.12,1988, Respondent directed a letter to Judge Fogel asserting (1) that he caused grievous harm and hurt to children and parents, (2) that he was guilty of judicial misconduct, (3) that he had perpetrated probable criminal acts in attempting to cover up for one Phil Hammer who, Respondent asserted, was guilty of " gross mal-

practice " in the Munn matter, (4) that Judge Fogel may be guilty of criminal conspiracy to obstruct justice, (5) that he had failed to perform his duty as a judge, (6) that he was incompetent, and (7) that he was guilty of political bungling. (State Bar, Ex. 60.)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

16. On or about Feb. 17, 1988, Respondent directed a letter to Paul Jacobs Esq., with copies to Judges Stone Fogel, Elia, Ambler, Commissioner Kittle, and others. In it, Respondent (1) asserts that Jacobs, Stewart, Fogel and Kittle

committed errors and omissions which were an outrage in the name of the law, 2) asserted they attempted to cover up the errors and compounded a felony, and 3) invited Jacobs to " take your compulsions out of County at once, with Phil Hammer and any embezzlers around. " (State Bar, Ex. 63)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

17. Respondent directed a letter to Donald Breer of the State Bar with reference to its Family Law Accounting Seminar. After mentioning that Judge Fogel was "featured," she asserted that Judge Fogel had covered up Family

Court embezzlements from the police and authorities to protect to protect Phil Hammer. (State Bar, Ex. 64)

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

18. On or about February 20, 1988, Respondent directed a letter to Santa Clara Superior Court Presiding Judge Peter Stone. The subject matter of the letter was indicated as " Re: Mass murders caused by the Family Court Incompetence. " Respondent asserted that by signing an Ex Parte Order in the Farley case, " Commissioner Kittle signed seven persons' death warrants." (State Bar, Ex. 68).

At the disciplinary hearing before

this State Bar Court, Responpondent failed to produce any oral or documentary evidence supporting her assertion.

19. On or about February 29,1988, in Munn v. Lebbos, Respondent filed a declaration (State Bar, Ex. 66.) containing the following assertions:

a. Judge Elia had abused the parties in family law matters

b. Judge Fogel acted out of political motives.

c. Judge Elia's Order in Black v. Farley was the cause of the mass murders.

d. The Judges of the Family Court had done nothing to " clean up the worst Family Court in history "

e. That it must be assumed that the

Judges of the Family Court will be biased, prejudiced, and predisposed to lack of neutrality.

f. That the Judges of the Family Court are ignorant.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertions

20. On or about February 23, 1988, in Munn v. Lebbos, Respondent directed a letter to Donald Breer, Section Administrator of the State Bar. In it, Respondent asserted that Judge Fogel :

" ... as Supervising Judge of the Family Court, is responsible for being instrumental and allegedly covering up the worst embezzle-

ments in Family law history and now-this-the worst mass murders in the entire history of Family Law in the world."

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertions.

COUNT SEVEN: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with making false statements about persons with no factual basis to support them.

1. On or about December 22, 1986, Respondent filed a Chapter 11 Bankruptcy Petition asserting that her law practice was terminated July 15, 1988 by an illegal Order on a debt pending appeal.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

2. During the period from approximately August through September, 1986, Respondent left messages on her answering machine informing any caller that a Federal Grand Jury was investigating attorneys John Miller and Mary Anne Grille. The message also stated that Respondent was herself testifying before such Grand Jury on such matters.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

After a protest by Miller, Respondent made certain changes to the message, but taped an assertion that she was testifying daily before a grand jury for over four (4) months.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

3. On or about September 14, 1986, Respondent directed a letter to Judge Jack Komar, the Judge in the Wooten case (State Bar, Ex. 52) asserting that criminal and State Bar charges were being filed against Miller and Grille.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or docu-

mentary evidence supporting her assertion.

4. In or about April, 1987, Respondent directed a letter to Judge Elia relating to disqualification. (State Bar, Ex. 43) In it, she asserted that Judge Rushing deliberately set out to bankrupt Respondent out of spite.

At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or docuumentary evidence supporting her assertion.

5. Respondent asserted that Judge Black awarded custody of the children in the Kemp matter without notice to the other party. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her

assertion. The contrary, State Bar Ex. 72 shows that it was a contested custody hearing lasting five (5) days, with all the parties present.

6. On or about Nov, 23, 1987, Respondent filed documents with the Court of Appeal that the State Bar had decided not to bring charges against her based on Judge Fogel's complaint. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

7. On or about Feb. 29, 1988, Respondent filed documents with the Santa Clara Superior Court in Munn v.Lebbos asserting that the State Bar had decided not to bring charges against her based on complaints of Judges Fogel, Judge Stewart and Judge Elia.(State

Bar, Ex. 66, pg. 8,L. 16-25). At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion. The fact the hearing took place demonstrates other-otherwise.

8. On or about Feb. 27, 1988, Respondent issued a letter accusing the court of issuing an OSC in Black v. Farley without a proper supporting affidavit. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

9. On or about February 9, 1988,Respondent issued a letter asserting that Judge Stone converted property belonging to the Federal Court. (State Bar,

Ex. 61, last par.) At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

10. On or about February 12, 1988, Respondent directed a letter to Santa Clara Superior Court Presiding Judge Stone in which Respondent asserted the existence of an Order of the Federal Court to turn over certain money. At the disciplinary hearing before this State Bar Court, Respondent failed to produce any oral or documentary evidence supporting her assertion.

COUNT EIGHT: FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with repeatedly filing improper motions

to disqualify Superior Court Judges. 1. On or about February 17, 1987, Respondent filed a motion with supporting declarations attempting to disqualify Judges Stewart, Fernandez, Foley, and the entire Santa Clara Superior Court for actual bias and prejudice " in the Sandhir case. (State Bar,Ex. 21, pg. 1, L.17-24; pg.11,L.5-15)

Respondent issued a further letter dated March 26, 1987, asking that Judges Stewart, Elia and Fogel disqualify themselves " for cause from any of the cases in which I may appear for my clients and their children." (State Bar, Ex. 42, page.2)

The Judicial Counsel assigned Sacramento Judge James T. Ford to hear the matter. By decision filed April 30, 1987, Judge Ford denied the motion

in its entirety and holding that none of the judges mentioned by Respondent were disqualified.(State Bar, Ex.82)

3. Without following the statutory procedures specified by C.C.P. Sec. 1008 or utilizing the procedures available to Respondent in the appellate Courts, Respondent thereafter:

a. By letter of June 12, 1987, " assumed (Judge Fogel) is disqualified."

b. By letter of July 1, 1987, asserted that Judge Stewart was disqualified. (State Bar, Ex. 85)

c. Attempted to disqualify Judge Stewart in Lindsey v. Lindsey (State Bar, Ex. 86, 90)

d. Attempted to disqualify Judge Stewart in Young v. Rease (State

Bar, Ex.95)

e. Attempted to disqualify Judge Stewart in Webber v Webber (State Bar, Ex. 86, 90)

f. Attempted to disqualify other Santa Clara Superior Court Judges in Magee, Andrade, Rhedrick (State Bar, Ex. 98, 99, 102,103, 104, 105)

3. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utilizing the procedures available to Respondent in the appellate courts, Respondent thereafter filed a motion to disqualify Judge Stewart in Chaparro v. Chaparro. The motion was heard by Santa Clara Superior Court Presiding Judge David W.Leahy. On Nov.23, 1987, Judge Leahy denied the

motion and struck from the record Respondent's statement of disqualification. Judge Leahy also noted that it was but a repeat of grounds unsuccessfully used in the prior attempts to disqualify Santa Clara Superior Court judges. (State Bar, Ex. 107)

4. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utlitizing the procedures available to Respondent in the apellate courts, Respondent thereafter filed a document on Feb.29, 1988 in Munn v. Lebbos attempting to disqualify for cause all judges of the Santa Clara Superior Court.

The motion was heard by Judge Leslie C. Nichols, assigned by the

Judicial Council. On March 1, 1988 Judge Nichols denied the motion in its entirety.

5. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utlitizing the procedures available to Respondent in the appellate courts, Respondent thereafter filed a document on Feb, 29, 1988 in Munn v. Lebbos to disqualify for cause all judges of the Santa Clara Superior Court.

The motion was heard by Judge Leslie C. Nichols, assigned by the Judicial Council. On March 1, 1988 Judge Nichols denied the motion in its entirety.

6. Thereafter, and again without following the statutory procedure specified by C.C.P. Sec.1008 or utlitizing

the procedures available to Respondent in the appellate courts, Respondent thereafter filed a document on May 20, 29, 1988 in Munn v. Lebbos described as a " Special Appearance/ Disqualification." Judge Stone then issued an Order " striking Respondent's Purported Statement of Disqualification, " noting that it was " strikingly similar to statements of disqualification filed by this same attorney in various cases in this county, including one filed February 29, 1988." 7. State Bar Exhibits 42, 54, 58, 59, 60, 61, 63, 64, 65, 67, 68, 83, 85, 109 and 110 are a series of letters Respondents directed to various judges in an effort to exasperate them to the point that they would recuse themselves from her cases, thus accom-

plishing what Respondent was unable to accomplish by disqualification motions in court.

8. Respondent's constant barrage of calumny, deceit, and harassment has not only hampered the work of the Family Court, it has also made the operation of the entire Justice System in Santa Clara more burdensome.

(a) Respondent 's cases necessitate special handling, and judges from other civil departments must accept assignments that normally would be heard by Family Court Judges.
(Testimony by Judges Stone, Fogel, and Stewart).

(b) Judge Elia was so goaded by Respondent's conduct that he found it necessary to recuse

himself from all of her cases voluntarily,

(c) Counsel and clients have been repeatedly obliged to return for Court hearings because of an overburdened Court adding to both the cost and inconvenience of litigation.

All of the foregoing consequences resulted from the display of offensive personality by Respondent.

COUNT NINE : FINDINGS OF FACT UNDER B. & P. CODE SEC. 6007 (c) (2)

This Count charges Respondent with naming a person as plaintiff in litigation without such person's consent.

1. On or about October 2, 1986, Respondent filed an action in the federal court. In it, Respondent identified McCutcheon as a plaintiff, together

with others. (State Bar, Ex.116)

2. McCutcheon did not retain Respondent to represent McCutcheon in such litigation, did not want to be in the case, and did not authorize Respondent to include McCutcheon as a plaintiff therein. (State Bar, Ex. 36.)

CONCLUSIONS OF LAW

The Compensated Referee herein concurs with the Conclusions of Law contained in the Decision by the Honorable Leland J. Lazarus filed herein on January 9, 1989. The full text of those Conclusions of Law is incorporated herein by reference. Briefly re-stated, Respondent has violated numerous provisions of the Business and Professions Code and the Rules of Professional Conduct.

1. Business and Professions Code

section 6068 (a):

Respondent has repeatedly failed in her duty to support the laws of this state. Respondent has wilfilly and repeatedly violated the oath taken by her and has wilfully violated her duties as an attorney.

2. Business and Professions Code section 6068 (b):

Respondent has repeatedly failed in her duty to maintain the respect due to the Courts of justice and judicial officers.

3. Business and Professions Code section 6068 (c):

Respondent intentionally initiated and maintained groundless proceeding in her efforts to disqualify Santa Clara Superior Court judges.

4. Business and Professions Code

section 6068 (d):

Respondent knowingly, and with intent to deceive, prepared false Court documents.

5. Business and Professions Code section 6068 (f):

Respondent has egregiously failed in her duty to abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party unless required by the justice of the cause..

6. Business and Professions Code section 6068 (g):

Respondent has initiated groundless proceedings from corrupt motives of passion and interest.

7. Business and Professions Code section 6103: Respondent has willfully violated the oath taken by her and has

willfully violated her duties as an attorney.

8. Business and Professions Code section 6106: Respondent has willfully perpetrated acts of moral turpitude and dishonesty in that Respondent :

(a) Intentionally altered court documents.

(b) Intentionally concealed assets.

(c) Intentionally made groundless charges of professional misconduct, judicial misconduct, sexism, racism, and criminal conduct against others.

9. State Bar Rules of Professional Conduct, Rule 1-110 : Respondent intentionally initiated groundless legal actions, and asserted positions

in litigation, solely for the purposes of harassment and spite.

10. State Bar Rules of Professional Conduct, Rule 7-105 (1) : Respondent intentionally engaged in deceitful and deceptive practices with the intent to deceive the court and counsel in that Respondent:

(a) Intentionally altered documents,

(b) Intentionally concealed assets.

(c) Employed means not consistent with truth in her dealings with the Court and opposing counsel.

(d) Initiated litigation on behalf of a person Respondent did not represent, who did not want to be in the litigation, and who did not want to be named as a party.

11. State Bar Rules of Professional Conduct, Rule 8-101 (A): Respondent filed to keep client funds in one or more identifiable bank accounts labelled " Trust Account." " Clients Trust Account," or words of similar import. Respondent also commingled client funds with her own funds.

SUBSTANTIAL THREAT OF HARM

In accordance with the provisions of Section 794 of the Rules of Procedure of the State Bar,and Section 5007 (c) (2) of the State Bar Act, and based on the Findings of Fact and Conclusions of Law hereinabove set forth, the Compensated Referee herein determines :

(A) That the Respondent's conduct has caused substantial harm to the public, is causing substantial harm

to the public, and poses a substantial threat of harm in the future to the public.

(B) That there is a reasonable likelihood that the harm will reoccur or continue, and

(C) The balance of interests, as between the attorney on the one hand and the public on the other hand, favors an involuntary inactive enrollment.

There is clear and convincing evidence that Respondent lacks remorse for her actions, fails to understand the obligations which she bears as a member of the State Bar of California, and, given an opportunity, will continue to engage in a continuation of the conduct which places excessive, and unnecessary burdens the admini-

istration of justice in the County of Santa Clara and elsewhere.

Respondent's constant barrage of calumny, deceit, and harassment has not only hampered the work of the Santa Clara Family Court, it has also made the operation of the entire justice system in Santa Clara Superior Court more burdensome.

Respondent's cases necessitate special handling, and judges from other civil departments and other counties must accept assignments that normally would be heard by Family Court judges.

Counsel and clients have been repeatedly obliged to return for court hearings because of an overburdened court adding to both the cost and inconvenience of litigation.

All of the foregoing consequences resulted from the display of offensive personality by Respondent. There is not the slightest indication in the record that Respondent will do other than conduct herself in utter disregard and defiance of not only the Rules of Professional Conduct, but also common decency.

We must quote with approval the language of the California Supreme Court in Re Nevill (1985) 39 C. 3d. 729, 735 :

" While we are not insensitive to the personal and professional problems that frequently besiege the pracititioner (citations omitted) it is our duty to protect the public from those attorneys who, for whatever reason, are unable to cope with the

pressure and adversity. The safety of The public and the integrity of the profession require no less."

ORDER FOR INACTIVE ENROLLMENT

It is the order of the undersigned that Respondent BETSEY WARREN LEBBOS be enrolled as an inactive member.

Dated: February 13,1989

L.J. DEWALD

L.J. DeWald,
Compensated Referee

(3)

No. 90-401

Supreme Court, U.S.
FILED
NOV. 23 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

BRIEF IN OPPOSITION TO CERTIORARI

Terence M. Troyer
Assistant Bar Counsel
75 Federal Street
Boston, MA 02110
(617) 357-1860

November 20, 1990.

No. 90-401

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

BRIEF IN OPPOSITION TO CERTIORARI

Terence M. Troyer
Assistant Bar Counsel
75 Federal Street
Boston, MA 02110
(617) 357-1860

ember 20, 1990.

QUESTIONS PRESENTED

1. Does this Court have jurisdiction to grant certiorari when there has been no final judgment in either the Massachusetts or California courts?

2. Did the Supreme Judicial Court of Massachusetts abuse its discretion in deciding that the findings of the State Bar Court of California provided a sufficient basis for temporarily suspending petitioner's license to practice law in Massachusetts when the California Supreme Court had denied review of those findings and this Court had denied certiorari?

3. Did the Supreme Judicial Court of Massachusetts abuse its discretion in refusing to rehear petitioner's various constitutional challenges to the procedures of the California State Bar Court?

PARTIES TO THE PROCEEDING

The petitioner misnames the parties to the proceedings below. Neither the Supreme Judicial Court of Massachusetts nor the Chief Justice of that Court are proper parties.

The case below was denominated In the Matter of Lebbos. The parties below, who are also the proper parties to this petition, were Betsey Warren Lebbos and the Bar Counsel. The Bar Counsel is an officer of the Board of Bar Overseers of the Supreme Judicial Court and is the official charged with prosecution of violations of the Disciplinary Rules which govern attorneys. Constance V. Vecchione, Esq. is currently the Acting Bar Counsel.

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
PARTIES TO THE PROCEEDING.	2
DECISION BELOW	5
STATEMENT OF THE CASE.	5
SUMMARY OF THE ARGUMENT.	8
ARGUMENT	10
I. THIS COURT HAS NO JURISDICTION TO GRANT CERTIORARI BECAUSE THERE HAS BEEN NO FINAL JUDGMENT.	10
II. THE MASSACHUSETTS COURT DID NOT VIOLATE ANY FEDERALLY-PROTECTED RIGHT BY ACCEPTING THE JUDGMENT OF THE CALIFORNIA COURTS.	11
B. The Actions of the Massachusetts Court.	11
A. The Attack on the California System.	13
CONCLUSION	15

TABLE OF AUTHORITIES

Court Decisions

Conway v. State Bar, 47 Cal.3d 1107, 767 P.2d 657, 255 Cal. Rptr. 390 (1989).	6, 12
In the Matter of Lebbos, 407 Mass. 1010 (1990).	5, 7
Keller v. State Bar, 495 U.S. --, 110 S.Ct. 2226, 110 L.Ed. 1 (1990).	13
Lebbos v. State Bar, 110 S.Ct. 335 (1989).	6, 12

Statutes

28 U.S.C. § 1257	10
Cal. Bus. & Prof. Code § 6007(c)	6
S.J.C. Rule 4:01(12A).	7, 10
S.J.C. Rule 4:01(16).	6, 13

DECISION BELOW

The decision below is In the Matter of Lebbos, 407 Mass. 1010 (1990). The copy of this decision which is reproduced in the Petition for Certiorari contains some significant typographical errors. In particular, an elision in the sixth line on page A-6 makes the opinion difficult to understand. A photocopy of the decision as appearing in the official reports is attached to this brief.

STATEMENT OF THE CASE

The petitioner, Betsey Warren Lebbos, is an attorney who has been admitted to practice in both Massachusetts and California. At all relevant times, her law practice has been maintained in California. She has not practiced law in Massachusetts. In fact, she has been excused from paying bar dues in Massachusetts because she informed the Massachusetts Board of Bar Overseers that she did not practice in Massachusetts.

On February 14, 1989, a Hearing Panel Referee of the California State Bar Court ordered that Ms. Lebbos be involuntarily placed on inactive status. Cal. Bus. & Prof. Code § 6007(c). Involuntary inactive status is a form of temporary suspension from the practice of law. Conway v. State Bar, 767 P.2d 657, 659 (1989). The California Supreme Court denied review on April 26, 1989, and this Court denied certiorari on October 30, 1989. Lebbos v. State Bar, 110 S.Ct. 335. Ms. Lebbos was therefore temporarily suspended from the practice of law in California. Her suspension was in conjunction with pending disciplinary proceedings which had resulted in a recommendation of disbarment; these disciplinary proceedings are still pending before the California Supreme Court.

The California order was brought to the attention of the Massachusetts Supreme Judicial Court pursuant to S.J.C. Rule 4:01(16). A single justice of the Supreme Judicial Court determined that the California findings and order satisfied

Massachusetts' requirements for a temporary suspension pending final disposition of disciplinary proceedings. S.J.C. Rule 4:01(12A). The single justice exercised his discretion to impose a Massachusetts suspension identical to the California one. He ordered the petitioner 'suspended from the practice of law in the Commonwealth of Massachusetts pending final disposition of disciplinary proceedings pending in the Supreme Court of the State of California."

Ms. Lebbos appealed to the full bench of the Supreme Judicial Court, which affirmed the decision of the single justice. In the Matter of Lebbos, 407 Mass. 1010 (1990). The Court held:

> The single justice was entitled in his discretion, as we are in our discretion, to conclude that, because the Supreme Court of California rejected the attorney's challenge to her temporary suspension pending a final appellate decision on her disbarment, parallel temporary suspension in Massachusetts is warranted. The attorney's various challenges to the constitutionality of the procedures in California need not be reassessed and decided here. . . . A final adjudication made elsewhere that

> circumstances warrant a temporary suspension may properly be the basis for a reciprocal order of temporary suspension here, particularly when the Supreme Court of that jurisdiction upheld that order.

The Massachusetts disciplinary proceedings are still pending. There are no charges against Ms. Lebbos except those arising out of California. The Massachusetts court is awaiting final disposition of the California charges before determining what reciprocal discipline is appropriate in Massachusetts.

SUMMARY OF THE ARGUMENT

1. There has been no final judgment of the Supreme Judicial Court of Massachusetts. Consequently, this Court does not have jurisdiction to grant certiorari. The order of the the Supreme Judicial Court is temporary and preliminary. By its very terms, the order looks toward further action at a later date.

2. The order of the California State Bar Court has been reviewed by the California Supreme Court

and is -- at least prima facie -- valid. Whether entitled to full faith and credit or not, the order was procedurally fair and is entitled to comity. The Supreme Judicial Court of Massachusetts did not abuse its discretion by deciding that the findings of the State Bar Court of California provided a sufficient basis for action in Massachusetts.

3. The Supreme Judicial Court of Massachusetts did not violate any federally-protected right by refusing to rehear petitioner's constitutional challenge to the procedures of the California State Bar Court. Petitioner had a full opportunity to present her claims to the California Supreme Court and to this Court. Both Courts had denied relief. The Massachusetts Supreme Judicial Court was entitled, at least in preliminary proceedings, to rely on the decisions of the other courts.

ARGUMENT

I. THIS COURT HAS NO JURISDICTION TO GRANT CERTIORARI BECAUSE THERE HAS BEEN NO FINAL JUDGMENT.

It is an elementary principle that this Court has jurisdiction to review state court decisions only to the extent the decisions are "final judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257. The very terms of the decision presently in question demonstrates that it is not "final." Rather, Ms. Lebbos has been suspended from practice "pending final disposition" of the charges against her. Her suspension is terminable "upon application . . . at any time." S.J.C. Rule 4:01(12A). A temporary suspension entered to prevent "substantial harm to clients or prospective clients" is no more final than a temporary injunction entered to prevent irreparable harm.

II. THE MASSACHUSETTS COURT DID NOT VIOLATE ANY FEDERALLY-PROTECTED RIGHT BY ACCEPTING THE JUDGMENT OF THE CALIFORNIA COURTS.

The actions of the Massachusetts courts do not implicate any federal question. Essentially all of the petitioner's arguments address alleged inadequacies in California procedures. She seeks to bootstrap her difficulties with the California system into an attack on the actions of the Massachusetts courts. What the Massachusetts Supreme Judicial Court did was fully protective of the petitioner's right to due process of law.

A. The Attack on the California System--The petitioner presents a wide array of attacks on the California bar discipline system. All of her arguments have, however, already been fully considered in settings much more conducive to effective review than the setting of the present case. To begin with, all of the arguments which the petition is now making have already been made to this Court on direct review. The same considerations that impelled this Court to deny

certiorari in Lebbos v. State Bar, 110 S.Ct. 335 (1989), are applicable here. If certiorari was denied on direct review, it should certainly be denied on this collateral attack. Massachusetts Bar Counsel is neither equipped nor motivated to provide an adequate advocate for the California system. Granting review in this case would not result in a fair or effective consideration of the charges made by the petitioner.

In addition, the question of the constitutionality of the California State Bar Court was extensively reviewed in Conway v. State Bar, 47 Cal.3d 1107, 767 P.2d 657, 255 Cal. Rptr. 390 (1989). After careful consideration of arguments charging violation of both the state and federal constitutions, the California Supreme Court determined that the procedures for involuntary inactive status passed muster. It would not be appropriate for this Court to review the California

Supreme Court's decision in the setting of the present case.[1]

B. The Actions of the Massachusetts Court--The Supreme Judicial Court was fully protective of the procedural rights guaranteed to Ms. Lebbos. S.J.C. Rule 4:01(16) places significant limitations on the Court's power to act. The Court

> "may enter such order as the facts brought to its attention may justify and, in any event, may impose the identical discipline unless . . . the Court concludes, that
>
> (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard;
>
> (b) There was significant infirmity of proof establishing the misconduct;
>
> (c) imposition of the same discipline would result in grave injustice; or

---

[1]The petitioner argues that the validity of Conway and, indeed, the validity of the decision now at bar, is somehow implicated by this Court's decision in Keller v. State Bar, 495 U.S. --, 110 S.Ct. 2226, 110 L.Ed. 1 (1990). This argument borders on frivolity. The Court's resolution of the free-speech problems involved in an integrated state bar have little or no impact on the constitutionality of the State Bar Court system. Clearly, attorneys may be taxed to maintain a bar discipline system, and there is no suggestion in Keller to the contrary.

(d) the misconduct established does not justify the same discipline in this Commonwealth.

These restrictions were fully honored by the Supreme Judicial Court. The Court did not act until it had determined that Ms. Lebbos had received notice of the intentions of the State Bar Court, had been given an opportunity to defend, and had in fact brought her complaints to the attention of the California courts. There was no infirmity of proof. Twenty-five volumes of testimony and 110 exhibits were before the referee; in addition, the referee considered the decision of the State Bar Hearing Panel which concluded that Ms. Lebbos was culpable of nine counts of professional misconduct involving approximately forty separate acts. These acts included the altering of court papers and filing of false documents; giving false testimony; wilfully and deceitfully concealing assets in court proceedings; making false statements with the intent to mislead the courts; continual filing of frivolous motions to disqualify all judges of the Santa Clara

County Superior Court from hearing any case in which she appears as attorney; making of repeated offensive, disparaging, scurrilous and false statements atginst judges and opposing counsel; commingling of a client's trust funds in her own personal account; and filing a complaint that named as a plaintiff a former client without the former client's knowledge or consent. Such offenses fully support a temporary suspension in Massachusetts.

CONCLUSION

The Court should deny the petition for certiorari.

Respectfully submitted,

Terence M. Troyer
Assistant Bar Counsel
75 Federal Street
Boston, MA 02110
(617) 357-1860

November 20, 1990

The history of the statute also does not support the plaintiff's position. Section 36A was enacted based on a bill filed with the House of Representatives in 1972 by Franklin N. Flaschner, the then Chief Justice of the District Courts. See St. 1972, c. 398. See also St. 1986, c. 599, § 38 (chapter rewritten without change to § 36A). Chief Justice Flaschner wrote to the Governor's legislative secretary that the bill was filed to fill "a gap in the new Mental Health Code." Chief Justice Flaschner wrote that, "[u]nder [prior c.] 123, there was a provision for the [maintenance] of private dockets and records concerning mental commitment cases. No comparable provision was encoded in the revision of Chapter 123. This bill takes care of that situation in a fair and comprehensive manner." Letter to Edward S. Morrow, the Governor's legislative secretary, from Franklin N. Flaschner dated April 28, 1972. The history of the legislation indicates a legislative intent to protect the privacy of persons subjected to mental examinations by courts, but the history does not indicate an intent to create a cause of action for violation of the statute.

Thus, neither the words of the statute nor the history of the legislation supports the plaintiff's position. The ruling on the defendant's motion to dismiss is reversed. The case is remanded to the Superior Court for entry of an order allowing the defendant's motion to dismiss because the complaint fails to state a claim on which relief can be granted.[1]

So ordered.

Roberta T. Brown, Special Assistant Attorney General, for the defendant.

IN THE MATTER OF BETSEY WARREN LEBBOS. June 13, 1990. *Attorney at Law*, Reciprocal discipline.

On December 13, 1989, on petition of bar counsel, a single justice of this court entered a judgment suspending the attorney from the practice of law in the Commonwealth pending final disposition of disbarment proceedings against her in California. The judge entered the order under S.J.C. Rule 4:01, § 16 (3), 365 Mass. 709 (1974), concerning reciprocal discipline.

Section 16 provides that, after notice and hearing, and following receipt of a certified copy of an order suspending a Massachusetts attorney from practice in another jurisdiction, the judge "may enter such order as the facts brought to [the judge's] attention may justify and, in any event, may impose the identical discipline unless . . . (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard; (b) there was significant infirmity of proof establishing the misconduct; (c) imposition of the same discipline would result in grave injustice; or (d) the misconduct established does not justify the same discipline in this Com-

[1]The complaint makes no claim pursuant to G. L. c. 214, § 1B.

monwealth." *Id.* See S.J.C. Rule 4:01, § 16 (1), as appearing in 402 Mass. 1302 (1988). An order had been entered in California involuntarily transferring the attorney to "an inactive status" on the basis of a finding that her conduct "poses a substantial threat of harm to the public or to [her] clients." The involuntary transfer of the attorney to inactive status is equivalent to what we call a temporary suspension. See *Conway* v. *State Bar of Cal.*, 47 Cal 3d 1107, 1111 (1989) ("involuntary enrollment of an attorney on inactive status . . . operates as a temporary suspension from the practice of law"). The attorney had voluntarily been on inactive status in Massachusetts and sought active status here only after her problems in California arose.

Although the record before us is sparse, we are able to conclude that, according to California practice, a hearing in which the attorney participated was held on charges of disciplinary violations against her. That hearing resulted in a finding of numerous violations of the California State Bar Rules of Professional Conduct, and a recommendation of disbarment. A record of the proceeding and a copy of the decision were filed with the Supreme Court of Califronia. See Cal. Bus. & Prof. Code § 6081 (West 1974). The matter of disbarment is pending on appeal in California. See *id.* at § 6082 (West 1974 & Supp. 1990).

Pending review of the recommendations of disbarment, the California State bar sought the attorney's involuntary inactive enrollment. Although notice of a hearing was sent to the attorney, she did not appear. The hearing panel referee, relying on the findings in the disbarment proceeding, ordered that the attorney involuntarily be placed on inactive status. The attorney then sought relief from that order. The Supreme Court of California denied relief, and the Supreme Court of the United States denied her petition for a writ of certiorari. *Lebbos* v. *State Bar of Cal.*, 110 S. Ct. 335 (1989).

We shall not recite the findings on the various charges of disciplinary misconduct, nor shall we become involved in the attorney's challenges to those findings. The single justice was entitled in his discretion, as we are in our discretion, to conclude that, because the Supreme Court of California rejected the attorney's challenge to her temporary suspension pending a final appellate decision on her disbarment, parallel temporary sjuspension in Massachusetts is warranted. The attorney's various challenges to the constitutionality of the procedures in California need not be reassessed and decided here. Section 16 permits a final adjudication of misconduct, made in another jurisdiction, to be treated as establishing that misconduct for our purposes. See S.J.C. Rule 4:01, § 16 (5), as appearing in 402 Mass. 1302 (1988). A final adjudication made elsewhere that circumstances warrant a temporary suspension may properly be the basis for a reciprocal order of temporary suspension here, particularly when the Supreme Court of that jurisdiction has upheld that order.

Judgment affirmed.

(6)

No. 90-401

Supreme Court, U.S.
FILED
DEC 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

REPLY TO BRIEF IN OPPOSITION

BETSEY WARREN LEBBOS
P.O. Box 40
New Almaden, Ca.

95042-0040

408-279-3100

Petitioner Attorney
Pro Se

QUESTIONS PRESENTED

1. May a state deprive an attorney of their 20 year reputation, right to work, and career on a claim that Comity or Full Faith and Credit may be applied to the ex parte totem pole hearsay and interlocutory claims of a non-lawyer volunteer of a California State Bar Association in another state asserting he is involuntarily enrolling the attorney as an inactive member of their bar association and this is a "suspension " as the non-lawyer volunteer is a private State Bar Court ?

Table of Authorities

Consumers Lobby v. Public Utilities Commission 25 Cal. 3d. 891 — 17

Conway v. State Bar, 47 Cal. 3d. 1107 (1989) — 18

In re: matter of Betsey Warren Lebbos 407 Mass. 1010 (1990) — 3,6,9

In re: Ruffalo, 88 S. Ct. 1222 — 15

Morgan v. United States v. United States (1936) 298 U.S.468, 56 S. Ct. 906, 912, 80 L Ed. 1288,1295; 304 U.S.1, 58 S. Ct. 773, 82 L.Ed. 1129 — 4

Ca. Business and Professions Code :

Section 6077 — 5

Section 6078 — 5

California Evidence Code :

Section 452 — 7

Massachusetts Supreme Judicial Court Rules:

SJC Rule 4:01 (12 A) — 14,15,16

SJC Rule 4:01 (16)(1) — 15

Table of Contents

I. Introduction 1

II. The charges claimed were never filed 2

III. There was no proof of any misconduct 8

IV. The proceedings were under The Reciprocal Discipline Rule 14

V. The issue has not been presented in any other setting 16

VI. Presence in a state is Irrelevant 18

Conclusion 19

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

REPLY TO BRIEF IN OPPOSITION

I.

Introduction

Due to the departure of Bar Counsel in Massachusetts, the brief submitted by his assistant without reference to the record has 34 factual errors. Only the major ones

are addressed herein.

Although they are not determinative of the imperative need to hear the Petition to protect 30 million United States citizens and their 125,000 lawyers in California and the need to void the Judgment as violating the Full Faith and Credit clause, Petitioner submits the following corrections from the undisputed record.

II.

The charges claimed were never filed

Only one of the charges recited by respondent as being recognized by Massachusetts were in fact ever filed or heard. BIO:14. (1)

(1) Petitioner submitted the actual charges filed. Reply Brief, SJC-5279,p.6-19, App. Ex.F. Respondent's list is inaccurate. His claimed serious charges were never filed or discussed.BIO:14.The only charge he accurately lists is commingling. It fails as there was no

(continued next page)

The Judgment recognized the record from the volunteer in the California State Bar Association was " sparce. " It had no charges. The record is so sparce that the judgment was unable to recite any charges. In re: matter of Lebbos, (1990) 407 Mass. 1010.

The judgment acknowledges that the non-lawyer volunteer of the

(1) (continued from prior page)

client. Refer ft. 1 on p. 16 of Amicus Curiae brief of Attorney Ronald Z. Berki of San Jose. There was a charge of filing a complaint that named as a plaintiff Mrs. McCutcheon without her knowledge or consent, but there was no charge she was a former client. She was a client. Her affidavit states, " I did not file a charge against Attorney Lebbos. The State bar filed a charge without my knowledge, permission, and consent alleging Attorney Lebbos filed suit for me without my consent. How they could file such a charge without ever speaking to me is unbelievable. Ms. Lebbos had my implied consent. I testified to that. She was my attorney.....I was shocked when the Examiner told me that I didn't

(continued next page)

California State Bar Association had no evidence or transcripts in support of any claims of professional misconduct. He just relied on what the prosecutor claimed happened in the prior advisory proceeding. Appendix A to Petition-" The hearing panel referee, relying on the findings in the disbarment proceeding, ordered that the attorney involuntarily be placed on inactive status. " There were, of course, no findings as his fellow

---

(1) (continued from prior page)

need to worry as the Referee would go along with " our side." It was my impression that, no matter what I said, it made no difference, as it was all set up. It is obvious that something is wrong with the Referee as he either can not hear or can not retain simple material. Or, in fact, it was a set up." Reply Brief, In re: Lebbos, SJC-5279, App., Ex.E. Her actual testimony of her consent is at page 19 of the Reply Brief, Ibid, SJC-5279.

volunteer could make no findings, only recommended findings for the state supreme court. Ca. Business and Professions Code sections 6077, 6078. Volunteers of trade groups do not make findings. Assistant bar counsel now inserts a factual contention never raised, which is disputed by the judgment. He asasserts the volunteer had 25 volumes of transcripts, 110 exhibits, and the " findings " of his fellow volunteer. BIO: 14. Since there were no transcripts, there were none to read. This raises a factual discrepancy between the judgment and the respondent's claims. This would affect the applicability of Morgan v. United States v. United States (1936) 298 U.S.468, 56 S. Ct. 906, 912, 80

L.Ed.1288,1295; 304 U.S.1, 58 S.Ct. 773, 82 L.Ed. 1129, cited at page 51 of the Petition. Compare In re: Lebbos, supra, p. 1011 and BIO: 14.

Since the first hearings did not conclude until January 9, 1989, and the second volunteer acted four weeks later without notice on February 13,1989, there were no transcripts. They were not prepared for another five months. Petitioner's Supp.Appendix, Ex. C-5, C-77 and Refer Page 9 of Amicus brief of Attorney Reginald Shinn.

A reading of what the non-lawyer signed resolves the dispute. The judgment is accurate while the claims of the respondent are not. The judgment states the referee " relied on the findings in the disbarment proceeding." In re Leb-Los, Supra, 1011. The papers

the volunteer signed admitted he read nothing and had no evidence. He solely asserts he is " judicially noticing " his fellow volunteer's alleged findings and conclusions only. Pet. Supp. App., Ex. C-5, Judicial Notice.

The California Evidence Code section cited permits Judicial Notice only by real courts of law of other real courts of law and only of final and binding adjudications. Evidence Code sections 451-452. It does not permit Judicial Notice of interlocutory or state bar claims or of fellow volunteers or lay people or hearsay. It also requires that notice must be given to a party of any request for Judicial Notice. No notice was given of

the proceeding. Petition, p. 47-49.

Thus the issue of recognition of an alleged State Bar Court is serious. With no final disposition, one volunteer may claim to notice interlocutory claims of his fellow volunteer as communicated to him ex parte by a prosecutor and take any lawyer's career nation-wide on hearsay, as occurred herein.

III.

There was no proof of any misconduct

When the Petitioner filed her Reply brief to the lower court setting forth in detail how the actual transcripts prepared months later refuted all charges, respondent did not attempt to assert there was any evidence to support any charge. Petitioner's Reply Brief, In re Lebbos, SJC 5279, pgs. 5-20. Respon-

dent's position is innocence is irrelevant. " We shall not recite the findings on the various charges of disciplinary misconduct, nor shall we become involved in the attorney's challenges to those findings." In re: Lebbos, supra, p. 1011. Since there are no findings, the respondent erred as a non-lawyer volunteer of a trade group copying what a prosecutor claims happened in a prior advisory, nonfinal proceeding does not comply with basic due process of law under Morgan, supra nor qualify as " findings."

Assistant bar counsel now asserts that they were involved in those challenges, but that " there was no infirmity of proof," BIO: 14. With the respondent unable to recite what were the charges, and no reference in the record to any

actual proof of any, but the reverse; and the judgment's recitation that the court will not become involved in any proofs, this assertion fails for lack of corroboration in the record.

Petitioner refers this Court to the actual record below with sixteen public observers' affidavits that there was no evidence presented and the first volunteer the second volunteer claims to be copying could not see, hear, or remember who were the witnesses or the attorneys or the charges and to the actual transcripts showing innocence recited at pages 5-20 of the Reply brief. The first volunteer was mentally and physically incapacitated. In re: Lebbos, Supreme Judicial Court, Suffolk County, No. 89-42 BD011594, Exhibit B. A few

of the affidavits are as follows :

" Out of curiosity I attended one of the ... hearings and was appalled by what I saw and heard. Judge Lazarus was completely oblivious to his surroundings.. (it was) truly pathetic.. and I, a member of this society, was outraged that the State bar chose to appoint an 83 year old Judge, as the referee, and subject this human being to public humiliation by his inability to keep up with the issues at hand....I kept telling myself this could not be taking place in the United States of America... take note of the many times he had to be brought back to reality and the waste of time trying to explain the issues to him that he did not fully understand.."

D. Mathieson Affidavit.

" The referee was very friendly, congenial, legally incompetent and exhibited gross senility.. He had difficulty- in fact- a total lack of comprehension of explained law...In two seconds, he could not remember any of what he had read. Material was in and out of his mind so fact, it was like a revolving door. There was, in fact, no law. There was no evidence against Attorney Lebbos. "

H. Jeter Affidavit.

" It was the bigest farce I ever

saw. The referee was senile, and the examiner dishonest. Only Ms. Lebbos was honest and competent ... this was a political trial ... it was as crooked as any proceeding could ever be... I never saw such a group of sleaze lawyers as those who testified against Attorney Lebbos. They were her opposing counsel and they admitted to fraudulent behavior.. they had the wrong person on trial...Lebbos was innocent, and she proved it, but the Referee was just a " Plant."

J. Pullen Affidavit.

" Since (the referee) on several occasions complained to Ms. Lebbos that he couldn't hear her, while on the other hand Mr. Fishkin was constantly complaining that she was shouting so loudly it was hurting his ears, and those of his witnesses, it was obvious that (the referee) was missing major sections of testimony.... I would venture a guess he could not recognize a picture of Ms. Lebbos this soon after the hearing.. I believe (he is) senile, and this sham of a hearing should be dismissed ..."

G. Mathieson Affidavit.

" The old man they chose as a judge was not alert. He could not follow the testimony of the witnesses...he would lose his place, forget who was the witness, forget the subject, and five minutes

later, forget the same thing that occurred five minutes before... He would say the same thing over and over again and when it didn't apply... he did not follow the meaning of the words.. I state unequivocally I heard no evidence in support of the charges... Had the referee not been obviously senile or political, or both, it was clear that the State Bar had no case. I am shocked at how bad the State Bar abuses the law."

C. Waites Affidavit.

A perusal of those public observer affidavits, including newspaper reporters, leads no doubt that the proceeding the second volunteer and the respondent rely on was not a proceeding with any semblance of due process, competency or evidence. Reply Brief, App., Ex.E, In re: Lebbos, SJC- 5279; see also ft. 1, pgs. 16- 19 of Amicus brief of Attorneys Ronald Z. Berki and pgs. 29-40 of Amicus brief of Attorney John B. Gunn, both of San Jose.

As the nine Amicus briefs submitted from California attorneys from Sacramento to Los Angeles indicate, the State of California is in a serious Constitutional crisis. People who can not read or write are making orders ex parte taking 20-30 year careers of California lawyers and having them arrested and imprisoned.

IV.

The proceedings were under the Reciprocal Discipline Rule

Because of the defect in interpreting a Reciprocal Discipline rule as including ex parte hearsay claims of a non-judicial and interlocutory nature of a non-lawyer volunteer of a bar association, respondent now asserts that rule was not used by the single justice, but another rule. BIO: 7. He as-

serts that the single justice judgment was under SJC Rule 4:01 (12 A), and not the Reciprocal Discipline Rule, SJC Rule 4:01 (16) (1). BIO: 7.

However, both the single justice and full court judgment and the Notice served on Petitioner solely rely on the Reciprocal Discipline rule. Appendices A and B-1 to Petition. Any attempt to change the proceedings would appear to violate the mandate of In re: Ruffalo, 88 S.Ct.1222. Reply Brief, p.1, ft.1, In re: Lebbos, supra, SJC-5279.

This same factual error led respondent to assert that the Judgment is not final. BIO: 10. He cites rule 12 A as permitting termination of a suspension. That rule does not apply to reciprocal discipline cases under 16A as 16 A presupposes a

final judgment has been entered elsewhere. 12 A is not at issue. It was never pled. It does not apply as it addresses solely temporary suspensions entered to prevent harm to clients, and not 16 (1) Reciprocal Discipline suspensions.

V.

The issues have not been presented in any other setting

Respondent incorrectly asserts the issues they refused to hear have been fully considered in settings more conducive to effective review than this Petition. BIO: 11.

In none of the denied Petitions was the issue raised of a state violating the Full Faith and Credit clause by refusing to recognize a State Constitution and Comity and their mandatory nature and limitations. Respondent appears to agree

they violated the Full Faith and Credit Clause, BIO:9, but asserts Comity allows them to recognize an unconstitutional court and state statutes. BIO:9.

Second, the denial of a Petition is not considered an opinion under California Supreme Court Rule 29. Refer Reply Brief, In re: Lebbos, SJC 5279, p.4. Denial without an opinion is not res judicata or stare decisis on issues of law. Consumers Lobby v. Public Utilities Commission 25 Cal. 3d. 891, " when the issue is a question of law rather than of fact, the prior determination is not conclusive.."

Third, this Court's denial has always been considered a declination to decide, rather than an affirmative decision on the law.

Thus, the claim a denial of a

Petition without opinion may be treated as if it were a published decision on the law necessarily also violates the Full Faith and Credit clause as Massachusetts also declined to recognize that such a denial is not an opinion, and that tendered constitutional issues upon which a judgment depends must be decided when there is no controlling opinion and decision in the sister state. Refer Reply Brief, In re: Lebbos, SJC-5679,p.4.

The contention that Conway v. State Bar, 47 Cal. 3d. 1107 (1989) reviewed the constitutionality of the State Bar Court is error. It does not mention the issue. BIO:12.

VI.

Presence in a state is irrelevant

Respondent seems to assert that the Full Faith and Credit clause

may be violated as the attorney is not in Massachushusetts. BIO: 5.

His factual assertions of non-nexus are inaccurate. Petitioner was born, educated, both undergraduate and law school in the Boston area. She practiced law there from 1971 through 1975.

Her ancestor is William, the Earl of Warren, who signed the Magna Carta in 1215. Both sides of her family came over on the Mayflower and their names- Warren, Badger and Snow- are engraved on the Plymouth Rock.

CONCLUSION

The defect here is the taking occurs first. Respondent admits they violated their own rule requiring a certified copy of an order of suspension, but excuse their failure by claiming Conway

will be recognized, although it does not address the constitutional claims, and to the extent it does, it denies due process. The taking precedes due process. It is backwards. Respondent asserts that two volunteers of an out-of-state bar association, one impaired and the other, a non-lawyer, may be recognized and take a lawyer's career, when the Full Faith and Credit Clause does not permit recognition of interlocutory or private acts. Respondent " is neither equipped nor motivated to provide an adequate advocate for the California system." BIO:12. If they can not defend it, may they recognize it ?

RESPECTFULLY SUBMITTED,

Betsey Warren Lebbos

BETSEY WARREN LEBBOS
Petitioner Attorney Pro Se
P.O. Box 40
New Almaden, Ca. 95042-0040

408-279-3100

VERIFICATION

I have read and prepared the foregoing Reply to Brief in Opposition and state its contents are true and correct, based on my own personal knowledge, information, and belief, and this Declaration is executed this 30th day of November, 1990 at San Jose, Ca.

RESPECTFULLY SUBMITTED,

Betsy Warren Lebbos

BETSEY WARREN LEBBOS
Petitioner Attorney Pro Se
P.O. Box 40
New Almaden, Ca. 95042-0040

408-279-3100

NOV 19 1990

(4)

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

HAROLD RAUCH, ESQUIRE
21142 Patriot Way
Cupertino, Ca. 95015

408-446-3960

Amicus Curiae

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER

Now comes Harold Rauch, Esq., a duly licensed California attorney for 25 years. He applies to obtain leave of Court to file the attached brief as Amicus Curiae in support of Petitioner and this Court hearing her Petition.

This motion is being filed as

opposing party, Supreme Judicial Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as a lawyer in California affected by the grant or denial of this Petition. He wishes to bring to the Court's attention relevant matter which has not already been brought to its attention and which has not been raised by the parties. That relevant information concerns the need for this Court to void the State Bar Court of the California State Bar Association by reason of its exemption from all state law, including all law applicable to

other courts, and its running a press department issuing press releases which impair fair hearings in violation of this Court's holding in Sheppard v. Maxwell 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d. 600 (1966).

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity apply to a State Bar Court of the California State Bar Association, a private organization. Amicus requests the Petition be granted so that attorneys are not wrongly deprived of their right to work.

RESPECTFULLY SUBMITTED,

/S/

HAROLD RAUCH, ESQUIRE (Pro Se)
21142 Patriot Way
Cupertino, Ca. 95015
408-446-3960, Amicus Curiae

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

HAROLD RAUCH, ESQUIRE
21142 Patriot Way
Cupertino, Ca. 95015

408-446-3960

Amicus Curiae

QUESTIONS PRESENTED

1. Are state statutes which create a State Bar Court, in effect, a denial of equal protection of the law to California attorneys when that Court has exempted itself from all state law ?

2. Is due process of law violated by a State Bar Court when Court employees and the prosecutors use Court-owned press releases to issue advance press releases against the accuseds they are obligated to try objectively, fairly and impartially ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

BETSEY WARREN LEBBOS, ESQUIRE
P.O. Box 40
New Almaden, Ca. 95042-0040

Petitioner Pro Se

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent Court

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Respondent Bar Counsel

TABLE OF AUTHORITIES

CASES :

Lebbos v. Judges, Santa Clara Superior Court, 883 F.2d.810, at 818 (1989)	7
Sheppard v. Maxwell, 384 2U.S.333,86 S.Ct.1507, 16 L.Ed.2d.600 (1966)	6,11
California Business and Professions Code sections :	
Section 6001	6
The Judicial Code of Conduct, Canon 3 A (6)	11
ABA Standards for Criminal Justice, 2, s. 8.1.1 (a)	11
State Bar Rules of Procedure :	
Rule 240	6

TABLE OF CONTENTS

Page

Questions Presented.....1

List of Parties..... ii

Table of Authorities..... iii

Interest of Amicus 1

Argument 5

I. The statutes creating an alleged State Bar Court, Judges, and Involuntary Inactivity are Unconstitutional as a denial of equal protection of the law 5

Conclusion.....13

Verification.....15

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

I.

INTEREST OF AMICUS

Your Petitioner is a duly licensed California attorney for 25 years and has known the Petitioner Attorney for 17 years.

Amicus compared the actual charges filed with the press reports. The actual press releases were issued anonymously by the State Bar prosecutor. All later news reports copied the state bar's press releases and not the actual charges. There was virtually no similarity between the actual charges and the news releases.

The press releases were substantially distorted. There was no proof to support any of the prosecutor's press releases or charges. In fact, his claims did not relate to the actual charges. Most of the evidence actually refuted all the charges, as Amicus describes in the attached Amicus. There was no evidence to support the charges.

Yet Amicus has read articles the State Bar published claiming the Petitioner was found guilty of things not even charged.

The judges and prosecutors of the State Bar Court are co-employees and are allowed to issue their own press releases. Dues of California attorneys permitted to practice in California are used to run the full-time Press Department, effectively defaming attorneys on trial or before charges are filed or proceedings commenced. Businesses and income are thereby destroyed in advance of charges being filed so that the attorney can not economically or emotionally defend themselves.

ARGUMENT

I.
The statutes creating an alleged State Bar Court, Judges, and Involuntary Inactivity are Unconstitutional as a denial of equal protection of the law

All references hereinafter, unless otherwise specified, are to sections of Calfornia's Business and Professions Code.

The State Bar, its alleged " Judges " and " State Bar Court " have exempted themselves from the Rules of Professional Conduct, Judicial Code, disciplinary jurisdiction of the Commission on Judicial Performance, rule-making authority of the Judicial Council, state law and the requirements of public election, accountability, and state audit applicable to all other judges and courts in the

state. ..Section 6001.

It appears irrational and arbitrary to allow state bar court judges to exempt themselves from minimum standards of behavior.

The State Bar's rules of procedure, in effect when the Lebbos (disciplinary) matter was heard, concerning press releases by the state bar or its State Bar Court, or its alleged judges', were not complied with in the Lebbos case and violated the standards set forth in Sheppard v. Maxwell, 384 U.S.333, 86 S.Ct. 1507, 16 L. Ed. 2d. 600 (1966). Rule 240. (10)

The state bar releases deviated from the actual charges filed. They contain additional but derogatory claims not contained in charges filed and the status of

the case.. the extent of the publicity indicates the state bar issued at least 5 to 10....

In light of the state bar and alleged state bar court's intern-

---

(10) The Lebbos' press releases were not issued by the President of the state bar...There was no action of the President with concurrence of two Vice-Presidents. There was no general dissemination to the Public until after the state bar issued its releases...there appears to be substantial distortion in the state bar's press releases in the Lebbos case... March 3, 1988 is an official State Bar Press release issued before the attorney was served. All were issued Ex Parte. There was no prior notice to the attorney nor service of process. There was no required probable cause hearing. None of (their) press releases disclosed they were defendants in pending civil litigation filed by Lebbos. The news releases misstated the charges. They alleged charges that were, in fact, never filed. They claimed they had a State Bar Court. Their news releases concealed the fact they were brought at the request of Lebbos'opposing counsel and party defendants in Lebbos v. Judges, Santa Clara
(continued next page)

al rules which permit the prose-

ecutor to wage a news campaign

defaming an attorney with false

---

(10) (continued from prior page)

Superior Court,(1989) 883 F.2d.810 (Ninth). The March release claimed, " In three of the charges Ms. Lebbos is accused of filing altered documents with the Santa Clara Superior Court." The Notice shows only one charge. However, this one charge, Count 3 (1), the prosecutor dismissed the first day of hearing. The file shows the filing was not of an altered document. It was an excerpted transcript. An excerpted transcript is not an altered one ... The press release also claimed, " She also is accused of misappropriating funds." The bank records showed no funds moved... However, the inference of the press release is that there were multiple charges of misappropriating funds, when there was one, which became none as it was dismissed by the referee. Funds were never touched. Either the bank records were never read or if read,the misstatements were intentional. The dismissal of the one misappropriation charge did not occur until the state bar issued for ten months its false " Misappropriations " releases. The

(continued next page)

press releases and which permit any state bar person to issue such news

---

(10) (continued from prior page)

release claimed, " She also is accused of concealing assets from a creditor. " The charge was she concealed assets in her statements at a deposition on a particular date... The deposition was never submitted for review. It was never complete or completed. The state bar had no evidence of concealed assets, just the oral hearsay months later from an embezzling lawyer. (Ex.VVVV). The release claimed, " she is accused of resisting efforts to transfer her cases away from a judge who had recused himself." There is no rule of professional conduct involved. An attorney may waive a judge's recusal. The charge is she appeared in a courtroom. The Public may do so. The release claimed, " she is accused of filing a lawsuit without the alleged client's knowledge or consent." The client filed an affidavit. She said she did not file such a charge, did give consent, did so testify, and was never contacted by the state bar either before or after the charge was filed. The release claimed," several of the counts allege unethical behavior surroun-

(continued next page)

releases with the state bar 's News Department, which occurred in the Lebbos case, the State Bar

(10) (continued from prior page)

ding Lebbos' unsuccessful efforts to disqualify all Santa Clara County judges from all her cases. The one charge claimed a denial of a recusal on one case for one client precluded the attorney filing same or similar disqualifications for other clients concerning other judges ... The claim the attorney's efforts were " unsuccessful," was in no charge. The claim the attorney had filed to disqualify all judges from all her cases was in no charge. The release claimed, " She is also accused of making false charges against some of the judges and other persons involved in her cases." There is no such charge. One charge alleged she made false statements. There is a difference between making a charge against a judge and supposedly making a false statement. The later press release..claimed a State Bar Court referee acted. He had not done so. The referee's letter says he had not yet acted. However, the press release claimed she " is guilty of numerous charges of ethical misconduct." The letter (continued next page)

Court is void for passing rules and implementing them so as to violate the United States Supreme Court Sheppard, supra decision and violating due process of law. (11)

---

(10) (continued from prior page)

never, in fact, said what the charges were. The News Release then, once again, misstates the charges. It then falsely claimed that she is found guilty of over 20 violations of Business and Professions Code section 6068 (f). The letter never addressed any violations, any code section or any number. The Press wrote their articles, not from the letter, but from the false State Bar press release....no findings are made by the state bar, only by the admitting court.

---

(11)

Judicial Code of Conduct Canon 3 A (6) and the ABA Code DR-7-107 prohibit such news releases. The ABA Standards for Criminal Justice, 2, s. 8.1.1 (a) provides' A lawyer shall not release or authorize the release of information or opinion for dissemination by any means of public communication if such dissemination would pose a clear and present danger to the fairness of the trial.'

Charges such as recusing judges, filing lawsuits, appearing in a courtroom, being ' offensive ' as occurred in the Lebbos case, are frivolous.

But, these were the charges.

Such efforts by attorneys on behalf of clients or themselves are proof of professional competence and are, in fact, proper conduct. An attorney is under a duty to recuse a judge when he believes the judge may not be fair and impartial to a client's interest. An attorney must appear in the courtroom where his matter is assigned regardless of whether a particular judge sitting has disqualified himself from other cases or not. Alternatively, if it is in the best interests of a client to

proceed even with a judge who has recused himself on similar cases, then it is the attorney's duty to seek to waive that judge's recusal. Charges of professional misconduct for so doing effectively muzzle attorneys and prevent justice from being obtained.

CONCLUSION

Amicus requests this Honorable Court hear the Petition. A grave injustice has occurred to a truly dedicated and honorable attorney.

She was excoriated in the press by false and defamatory press releases when the State bar had no evidence to support any charge.

Allowing this association to have an alleged Court with such arbitrary powers denies an accused a fair and impartial proceeding which is a denial of due process

of law as occurred in the Petitioner's case.

Amicus therefore requests the Petition be entertained so that such serious injustices do not continue to California attorneys.

RESPECTFULLY SUBMITTED,

HAROLD RAUCH, ESQUIRE
21142 Patriot Way
Cupertino, Ca. 95015

408-446-3960

Amicus Curiae

VERIFICATION

I have read and prepared the foregoing Amicus Curiae Brief for Petitioner and Motion and declare under penalty of perjury that it's contents are true and correct, based on my own personal knowledge, information, and belief, and this Verification is executed this day of November, 1990 1989 at San Jose, California.

RESPECTFULLY SUBMITTED,

HAROLD RAUCH, ESQUIRE
21142 Patriot Way
Cupertino, Ca. 95015

408-446-3960

Amicus Curiae

NOV 19 1990

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

G.G.BAUMEN, ESQ.(Pro Se)
Lawyer
1950 Sunset Boulevard
Los Angeles, Ca. 90026

213-484-9161

Amicus Curiae

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER

Now comes G.G. Baumen, Esq., a duly licensed California attorney. He respectfully requests permission to file a brief Amicus Curiae in support of the Petition being granted.

Pursuant to United States Supreme

Court Rule 37.1, Amicus is interested in the issues presented as a California lawyer.

He wishes to bring to the Court's attention the legislative history behind the creation of an asserted State Bar Court of the California State Bar Association, which material has not been and may not be presented by the parties.

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity and Full Faith and Credit should apply to statutes that appear to be unconstitutional Bills of Attainder.

This motion is being filed as opposing party, Supreme Judicial Court, and Bar Counsel have not returned the written consent required

of United States Supreme Court Rule 37.2.

RESPECTFULLY SUBMITTED,

G.G.BAUMEN, ESQ.(Pro Se)
Lawyer
1950 Sunset Boulevard
Los Angeles, Ca. 90026

213-484-9161

Amicus Curiae

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF
MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

G.G.BAUMEN, ESQ.(Pro Se)
Lawyer
1950 Sunset Boulevard
Los Angeles, Ca. 90026

213-484-9161

Amicus Curiae

QUESTION PRESENTED

1. May a State grant Full Faith and Credit or Comity to state statutes that are Bills of Attainder ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

BETSEY WARREN LEBBOS, ESQ.
P.O. Box 40
New Almaden, Ca.
95042-0040

Petitioner Attorney

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent Court

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Respondent Bar Counsel

Table of Authorities

Brotsky v. State Bar (1962) 57 Cal. 5 2d. 287, 300-301 — 6

Byrdonjack v. State Bar (1929) 208 Cal. 439, 443 — 6

Calder v. Bull, 3 Dall. 386 — 33

Communist Party of United States v. Subversive Activities Control Board, 367 US 1, 6 L. Ed.2d. 625, 81 S.Ct.1357 — 34

Cummings v. Missouri, 71 US 277, 1 L.Ed. 356 — 23

Ex Parte Garland, 4 Wall. 333, 379 — 26,29,35

Fletcher v. Peck, 6 Cranch. 87, 136 — 30

Garner v. Board of Public Works. 341 US 716, 95 L.Ed. 1317, 71 S. Ct. 909, reh denied 342 US 843, 96 L. Ed. 637, 72 S. Ct.21 — 33

Joint Anti-Fascist Refugee Committee v. McGrath, 341 US 123, 95 L.Ed.817, 71 S. Ct. 624 — 33

In re Lavine (1935) 2 Cal. 2d. 324, 328 — 6

In re: Lavine (1935) 2 Cal. 2d. 324,328 6

In re: Shattuck (1929) 208 Cal. 6 6

Jacobs v. Board of Dental Examiners (1938) 75 P.2d 96, 24 C.A. 2d 359 9

Hinds v. State Bar (1941), 19 C.2d 77, at p. 93. 6

Hustedt v. Workers Comp. Appeals Bd., 30 Cal. 3d. 329, 337 9

Katz v. Workers Compensation Board (1981) 178 Cal. Rptr. 815, 636 P.2d 1153, 30 C.3d 353 9

Keller v. State Bar of California, (1990) 495 U.S.____, 110 L. Ed. 2d. 1, 110 S. Ct.____, overruling 767 P.2d. 1020, 255 Cal. Rptr. 542 (1989) 5

Laisne v.State Board of Optometry,(1942) 123 P.2d 457, 19 C. 2d. 831. 9

Lorber v. Storrow (1937) 70 P. 2d 513, 22 C.A.2d 25 9

MacCracken v. Board of Medical Examiners (1938) 74 P.2d 289, 24 C.A. 2d 58 9

Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381, 38 ALR 1479, error dismissed, 273 US 781, 71 L.Ed. 889, 47 S.Ct.460 11

Perry Farms Inc, v. Agr. Labor Relations Board, 86 Cal. App. 3d. 460, 150 Cal. Rptr. 495 9

Saleeby v. State Bar (1985) 39 Cal. 3d. 547 6

United States v. Brown, 381 U.S. 337, 445, 447 29,32

United States v. Lovett, 328 U.S. 303 29

United States v. O' Brien, 391 US 367, 20 L.Ed. 2d. 672, 88 S. Ct. 1673, reh. den. 393 U.S.900, 21 L.Ed.2d. 188, 89 S.Ct. 63 33

United States Constitution:

Article 1, section 9 23

Article 1, section 10 2,23

Amendment 1 2

California Constitution:

Article 1, Section 9 23

Article 6, section 1 6

Article 6, section 9 6

Ca. Business and Professions Code sections:

Section 6007 12,27

Section 6068 27

Section 6076 28

Section 6079 27

Section 6076 28

Section 6079.1 27

Section 6086 27

Section 6086.5 27

Section 6086.65 27

Section 6086.8 27

Section 6086.10 27

Section 6087 27

Section 6088 27

Section 6090.5 27

Section 6095.5 27

Section 6093 27

Section 6102 27

Section 6103 27

Section 6103.5 27

Section 6106 27

Section 6106.5 27

Section 6106.7 27

Section 6125 27

Section 6126 (b) 27

Section 6128 27

Section 6129 27

Section 6140.7 27

Section 6143 27

Section 6143 27

Section 6146 27

Section 6148 28

Section 6152 28

Section 6153 28

Section 6155 28

Books :

Coke, Commentaries on The Magna Carta 23

TABLE OF CONTENTS

	Page
Questions Presented	1
List of Parties	ii
Interest of Amicus	1
Constitutional Provisions Involved	2
Summary of Argument	3
Argument	3
I. The State Bar Court was created by accident	3
II. The State Bar Court is Unconstitutional as not within the Police Power of a State	10
III. The United States and State Constitutions Prohibiting Bills of Attainder invalidates The State Legislative Scheme for a State Bar Court	23
Conclusion	35
Verification	38

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

Amicus' Interest

Amicus appears as an interested California attorney who has researched the California state statutes at issue and their history and believes the Petition should be granted

as they appear to be unconstitutional Bills of Attainder as well as a denial of fundamental due process of law for California attorneys.

Amicus understands that the statutory complex may appear confusing at first view and submits the attached in the hopes it helps to clarify it for this Honorable Court, so that it can grant the Petition and find for the Petitioner.

Constitutional Provisions Involved

United States Constitution Amendment V. No person ... shall be deprived of life, liberty, or property, without due process of law...

Article I, section 10, clause 1. No State shall ... pass any Bill

of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts...

Summary of Argument

The Petition should be granted as California statutes creating a State Bar Court and permitting a state bar association person to " suspend " an attorney by claiming to enroll them involuntarily as an inactive member of the California State Bar Association are unconstitutional Bills of Attainder.

Argument

I.

The State Bar Court was created by accident

Amicus undertook a review of the legislative history in order to ascertain how the state statutes creating an asserted State Bar

Court and licensing by the California State Bar Association came about.

On March 4, 1985 Assemblyman Charles M. Calderon, Assemblyman from Montebello introduced AB 1275. Its preamble stated the following:

" Existing law, the State Bar Act, authorizes the Board of Governors of the State Bar of California, to establish one or more committees, known as disciplinary boards, to act in its stead in the determination of disciplinary and reinstatement proceedings. Two of the members of any such Board are required to be public members, who are appointed by the Governor. The rules of procedure adopted by the Board of Governors establish the State Bar Court organized as specified, which is responsible, among other things, for disciplinary and reinstatement proceedings.

This bill would amend the State Bar Act to specify the inclusion of the State Bar Court in certain provisions relating to the internal organization of the State Bar and its disciplinary proceedings."

The bill creating the State Bar

Court was passed on the erroneous belief that, if the 23 member Board of the California State Bar Asso - ciation created a Court by inter- nal rule, that the legislature could then merely affirm these internal acts and make it State Law.

This Court's decision in Keller v. State Bar of California, (1990) 495 U.S.____, 110 L. Ed. 2d. 1, 110 S. Ct.____, overruling 767 P.2d. 1020, 255 Cal. Rptr. 542 (1989), however, makes clear the California State Bar Association is a private association and not a governmental agency for purposes of application of the United States Constitution.

The constitutionality of the State Bar Act of 1927 was condi-

tioned on the association having no court, no judicial power, and its role being, as stated in Keller, supra, solely advisory to the Judiciary. Brotsky v. State Bar (1962) 57 Cal. 2d. 287, 300-301; Byrdonjack v. State Bar (1929) 208 Cal.439, 443, In re Lavine (1935) 2 Cal. 2d. 324, 328, In re: Shattuck (1929) 208 Cal. 6, 12; Saleeby v. State Bar (1985) 39 Cal. 3d. 547.

When the Legislature believed it could allow a private membership trade group to have a Court, they set in motion an invasion of Article 6, Section 1 of the California Constitution. That section provides all judicial power in the State is in the listed Courts. They also set in motion an abridgement by the Legislature of Article 6, Section

9 of the California Constitution which provides that the California State Bar Association is a corporation in the Judicial, and not the Legislative branch of Government.

In its final form, the Legislative Digest's comment provided the bill's purpose, as applicable herein, was as follows:

" This bill would amend the State Bar Act to, among other things, make various changes in the procedures for disciplining of attorneys, including specifying that these procedures are undertaken under the jurisdiction of the State Bar Court rather than disciplinary boards, providing that the Board of Governors may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses an imminent threat of harm to the attorney's clients or to the public..."

Later the " imminent threat " and " harm " requirements were deleted. The statute now states an

attorney may be involuntarily enrolled as an inactive member of the California State Bar Association by it if the " attorney's conduct poses a substantial threat of harm to the interests of .... clients or the public. " With interests being protected, and no actual harm required, jaywalking qualifies.

In sum, the bill not only gave the Board of the State Bar of California, against the will of its members and the United States and State Constitutions, the right to create a private Court, it also gave it judicial power to deprive attorneys of their right to use their valid licenses, granted not by the Legislature, but by the California Supreme Court.

This placement of judicial

power in a private membership trade group was in direct violation of existing California state law prohibiting the legislature granting any entity any judicial power. Hustedt v. Workers Compensation Appeals Board (1981) 178 Cal. Rptr. 801, 636 P.2d 1139,; Jacobs v. Board of Dental Examiners (1938) 75 P.2d 96, 24 C.A. 2d 359; Katz v. Workers Compensation Board (1981) 178 Cal.Rptr. 815, 636 P. 2d 1153, 30 C. 3d 353, Laisne v.State Board of Optometry, (1942) 123 P.2d 457, 19 C.2d 831; Lorber v. Storrow (1937) 70 P. 2d 513, 22 C.A. 2d 25 MacCracken v. Board of Medical Examiners (1938) 74 P. 2d 289, 24 C.A. 2d 58; Perry Farms Inc, v. Agr. Labor Relations Board, 86 Cal. App. 3d. 460, 150 Cal. Rptr. 495.

II.

The State Bar Court is Unconstitutional as not within the Police Power of a State

The legislative history implies that, because the Governor appoints two persons on the 23 member board of the California State Bar Association by statute, that this is a sufficient public nexus to permit the association to create a private court.

Rather than inquiring whether the statute was necessary for the public's health, welfare, or morals, the inquiry was limited to solely the fact that the Governor appoints two persons to sit on its board.

Since the police power of a state does not comprehend adopting

as State law the private rules of a trade group, and is a law of necessity exercisable only for the public's interest, there does not appear to be a police power purpose supporting the statute. Miller v. Board of Public Works, 195 Cal.477, 234 P. 381, 38 ALR 1479, error dismissed, 273 US 781, 71 L.Ed. 889, 47 S.Ct. 460.

The final version of AB 1275, which became Chapter 453, section 12 of the acts of 1985, stated the following :

> " This bill would amend the State Bar Act to, among other things, make various changes in the procedure for disciplining of attorneys, including that these proceedings are under the jurisdiction of the State Bar Court rather than disciplinary boards, providing that the Board of Governors may order the involuntary inactive enrollment of an attorney upon the finding that the attor-

neys' conduct poses an imminent threat of harm to the attorneys' clients or to the Public... "

In sum, it was in 1985 the State Bar had convinced the legislature that it could replace the California Supreme Court in the admission, licensing, and suspension of attorneys and the establishment of ethical rules and delegate those judicial functions to a private membership trade group the legislature wanted to license attorneys.

Thus, the involuntary inactive enrollment statute became law, because of a misconception that the State bar association could run a private State Bar Court and license lawyers. Ca. Business and Professions Code section 6007. (1)

On January 15, 1986, Senate Bill 1543 was introduced by Senators Presley and Nielsen, with Senators Ayala and Craven and Assembly Member Allen as co-authors. This bill sought to remove the California State Bar Association from involvement in attorney discipline or competence and create the California Commission on Attorney Discipline and Competency to replace it and for such a Commis-

---

(1) Chapter 6086.6 " Nonattorney members," passed by chapter 453, S. 13, of the aforesaid legislation went beyond the creation of an alleged State Bar Court and also created a Review Department of the State Bar Court. This is, in essence, an attempt to create another layer of court. The bill authorized the Review Board to have 16 members bers, with six such members consisting of non-attorney, public members appointed by state politicians, two by the Governor, two by the Senate Committee on Rules, and two by the Speaker of the Assembly.

sion to act as the administrative arm to the California Supreme Court in the Court's regulation of the legal profession.

However, the California State Bar Association convinced the legislature not to abolish it, by giving it greater judicial power. The statutes passed would suggest the California State Bar Association convinced the legislature the cause of the failures in the attorney discipline system was not the State Bar's defalcations, but those of the California Supreme Court, which needed to be replaced by the legislature licensing lawyers.

Thus, from a position of abolition of the State Bar, the legislature turned full circle and gave it consummate power to discipline

lawyers through a full-blown private State Bar Court.

The Legislative Counsel's Digest stated that the purpose of the bill as follows:

" This bill provides for the hearing of certain disciplinary matters by retired judges or if a retired judge is unavailable, by referees. It would provide for the appointment of a Chief Trial Counsel and specify his duties. It would provide for the Review Department of the State Bar Court and require the creation of a Complainant's Grievance Panel and a Discipline Monitor. It would provide procedures relating to the placement of attorneys on inactive status because of mental disorders or for " related reasons." It would make related changes. And finally, it would require the Board of the State Bar to transmit $ 90,000 by January 15, 1987 to the Controller.(emphasis added)

Whereas successful states have independent boards created by State Supreme Court rule which could never engage in bargaining off cash

for the state's coffers in exchange for being in existence, the California State Bar Association has now involved itself in delivering cash or favors, as herein described to the legislature, in exchange for controlling discipline of attorneys in the State and replacing the California Supreme Court.

This places the California State Bar Association under the legislative branch, divorcing it from its constitutional existtence, which is limited to the Judicial branch under Article 6, section 9 of the California Constitution.

There is no doubt from what has been passed that the California State Bar Association is seen as a money-maker or as a source of pa-

tronage for the legislature, when that could never occur in another state.

In 1988 Assemblyman Willie Brown proposed Senate Bill 4391, which was contingent on the passage of SB 1498. Assemblyman Brown's bill augmented state bar dues, permits the State Bar to raise revenue by any " lawful " means, assessed special dues, set up a Client Security Fund, provides that attorneys have to pay late penalties on dues as dues, provides for suspension for non-payment of penalties, and directs the State Bar, subject to the approval of the Committees of Judiciary of each house of the Legislature, contract with an independent expert for the purpose of developing and imple-

menting a minority and women enterprise program, and providing for mandatory dues to pay for these programs.

The statute that was the Quid Pro Quo for this legislation, SB 1498, gave the California State Bar control over any attorneys' law practice and right to work and abolished all vestiges of licensing by the California Supreme Court in fact.

The Legislative Counsel's Digest stated the following:

" The bill was to change 1) the California State Bar Association, revise standards and procedures, revise the inactive enrollment of attorneys, authorize the imposition of remedies or final discipline (by the California state bar association) short of involuntary inactive enrollment to restrict or supervise an attorney's practice of law...2) providing for fingerprinting of certain members of the State Bar ...

3) revising the duty of an attorney to report judgments against the attorney to include judgments for incompetent representation, 4) adding a duty on attorneys to provide certain ... documents to clients, 5) repealing and enacting a provision for the trial of matters before the State Bar Court to require the appointment of hearing judges (emphasis added) for six-year terms, who would be assisted by compensated referees... ; 5) providing for the finality of the State Bar Court decisions (emphasis added), and for contempt citations for failure to comply with those decisions, 6) requiring the employees of the State Bar Court, to be composed, as specified; 7) repealing and reenacting provisions for the Review Board of the State Bar Court, and establishing the Executive Committee of the State Bar Court, to be composed as specified; 8) requiring any Court which holds an attorney in contempt or which sanctions an attorney for misconduct to notify the State Bar; 9) extending the term of the State Bar Discipline Monitor ... and providing for a surcharge ... 10) authorizing the Supreme Court to delegate its disciplinary powers to the State Bar Court, as specified ; 11) giving the State Bar access to all court records relevant to the competence or performance of its'

members..12) requiring attorneys to furnish client trust fund and other proper records to the State Bar; 13) providing for disbarment or suspension for violation of disciplinary probation (emphasis added); 14) providing for disbarment with or without possibility of readmission (emphasis added); 15) providing for the imprisonment for practicing law when no longer (an active) member of the State Bar or failing to comply with certain orders of the State Bar Court,..(emphasis added); 16) requiring the removal of the name of a disbarred attorney from the name of his or her firm and making it a misdemeanor to employ a disbarred attorney in the practice of law (emphasis added); 17) requiring the imposition of a disciplinary augmentation fee...; 18) providing for refund of unexpended membership fees...19) requiring the establishment of a Client Security Fund, and increasing the maximum surcharge .. 20) requiring the Board of Governors to adopt rules limiting the maximum payment to a single claimant from that fund..., providing for the subrogation for payment made from the fund as a condition of continued practice; 21) prohibiting the maintenance of Attorney Trust accounts in financial institutions which do not agree to report to the State Bar instruments presented against accounts

with insufficient funds...22) prohibiting the commencement of a negligence action against a member of the State Bar except upon the certificate that a copy of the complaint was served on the State Bar... and 23) making various procedural changes with regard to disciplnary matters."

This bill created the new crime of practicing law while enrolled involuntarily as an inactive member of the California State Bar. Ca. Business and Professions Code section 6126 (b).

As finally enacted, SB 1498, which became chapter 1159, turned attorney discipline completely over to the California State Bar Association, permits it to restrict or limit any attorneys' law practice without notice or hearing, or take their career without notice or hearing. It allows the imprisonment of an attorney for a crime of prac-

ticing law while involuntarily enrolled as an inactive member of the State Bar based on an ex parte act of a bar volunteer.

It forces the compelled attorney members to finance legislative programs and conduct them. In fact, it creates a police state for lawyers- they are fingerprinted, ordered to comply with so many unnecessary, intrusive and improper regulations of servitude to the state legislature and its creation, the State Bar, and are subject, not to the rules of ethics of their admitting court, but to irrational, overbroad, and intrusive overregulation and invasion of their judicial duties by the state legislature.

These statutes are not in aid

of the State Bar assisting the Judiciary in attorney discipline, but in taking it over.

II.

The United States and the State Constitutions prohibiting Bills of Attainder invalidate the state legislative scheme for a State Bar Court

The prohibition on Bills of Attainder in Article 1, sections 9 and 10 of the United States Constitution and Article 1, section 9, of the State Constitution, void state statutes which take the life, liberty, or property of United States citizens without judicial due process of law and by legislative fiat.

The prohibition was central to the creation of the United States and was first expressed in the Magna Carta of 1215, which ex-

pressed the prohibition eloquently, in chapter XXIX,:

> " No free man shall be taken, or imprisoned, or disseised of his freehold, or liberties, or free customs or be outlawed, or exiled or otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right." (emphasis added)

As Edwardo Coke in his Institutes described the clause, " No forfeiture can grow by letters patent." The awareness was even in the year 1215 that legislative acts whereby property or lives or liberty was taken by parliamentary act or kingly prerogative was a corruption of sorts. Coke defended the supremacy of the Common Law over King, Parliament, and government as expressed in the Magna Carta. Lord

Coke who had been Solicitor General and Attorney General, Speaker of the House of Commons and Chief Justice of England, was stripped of position, land, titles in the 1620's, and in his seventies, imprisoned for treason in the Tower of England, due to his refusal to permit the King to overthrow this common law.

Lord Coke said, " " No free man shall be taken or imprisoned except upon the Due Course of the law."

It was Coke's dedication as a Jurist that lead the American Revolution's call to arms and gave the first American Patriots their zeal to separate their government into three discrete parts and prohibit their encroachment on each other. Central to that

principle was the prohibition on the Bills of the taint of the blood, or the corruption of the blood, commonly called Bills of Attainder.

Early in our history, this Court stated in Ex Parte Garland, 4 Wall. 333,379, that an attorney could not lose their right to practice law at the " command of the legislature," as follows :

> " The attorney and counsellor being, by the solemn act of the court, clothed with his office, does not hold it as a matter of grace and favor. The right, which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. (emphasis added). It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency. "

The judgment of the court refer-

red to is obviously the admitting California Supreme Court, and not the legislatively non-admitting State Bar Court. Yet the state statutes envisage the taking of the right to practice law by legislative fiat and by a legislatively-created, private opponent and competitor court with no admitting court action and for no ethically-prohibited conduct expressed by that admitting court.

It thus appears that California Business and Professions Code sections 6007, 6079, 6079.1, 6086, 6086.5, 6086.65, 6086.8, 6086.10, 6088, 6090.5, 6102, 6068, 6102, the 1988 amendment to 6087, 6095.5,6093, 6103, 6103.5, 6106, 6106.5, 6106.7, 6125, 6126 (b), 6128, 6129, 6140.7, 6146, 6143,

6148, 6152, 6153, 6155, which seek to impose ethical duties on attorneys by legislative will and which have not been approved, as required for all Rules of Professional Conduct, by the attorney's admitting court as required under California Business and Professions Code section 6076, are not only unconstitutional under the required separation of powers, but as legislatively-prohibited Bills of Attainder on attorneys. To the extent Lebbos was charged with violating state statutes and not the Judicially-approved Rules of Professional Conduct, those charges are obviously void.

The question whether a statute or a complex of statutes are unconstitutional Bills of Attainder and

not just a reasonable exercise of limited police power, appears to be whether it is a law or a complex of law which legislatively determine guilt and inflicts punishment upon an identifiable group without provision of the protections of a judicial trial. United States v. Brown, 381 U.S. 337, 445, 447 (1965); United States v. Lovett, 328 U.S. 303, 315-316 (1946); Ex Parte Garland, Supra; Cummings v. Missouri, 4 Wall. 277, 323 (1867).

Since the statutes authorize the State Bar through its' alleged State Bar Court to take the careers and right to work of California attorneys, Ex Parte, and cause the imprisonment of lawyers and with no judicial or other trial, or admitting court action and for no viola-

tion of the ethical standards of their admitting Court, but for a vague statutory standard of " conduct posing a substantial threat of harm to the interests of the public, " a virtual non-standard, all of the statutes read together appear to be unconstitutional Bills of Attainder.

As stated in Fletcher v. Peck, 6 Cranch. 87, 136, " It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments."

It was Thomas Jefferson who foresaw the situation in which California now confronts itself, with the legislature licensing

attorneys by legislative act, and depriving them of their right to work and causing their imprisonment by legislative act. In his Notes on the State of Virginia, he said, the following, at pp. 157-158 (Ford. Ed.1894) :

" 173 despots would surely be as oppressive as one... Little will it avail us that they are chosen by ourselves... The government we fought for is one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by others. For this reason that convention, which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time...<u>If the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor if made, can it</u>

> be effectual-because in that case they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches They have accordingly in many instances, decided rights which should have been left to judicial controversy. " (emphasis added)

As stated in United States v. Brown, supra, " The Bill of Attainder clause is to be liberally construed in the light of its purpose to prevent legislative punishment of designated persons or groups. " The Public never authorized the State Bar or the legislature to decide which lawyers should be removed.

The People, through their constitutional direction, have indicated those in the Judicial branch are separated from those under the Legislative branch.

Article 3, Section 3, California Constitution.

In order to maintain that separation of powers, those in the Judicial branch may not be under the effective control or direction of another branch. Otherwise, there is no required separation of powers and independence of those in the Judicial branch of government as ordered by Article 3, section 3 of the California Constitution. see Calder v. Bull, 3 Dall. 386 and Garner v. Board of Public Works, 341 US 716, 95 L. Ed. 1317, 71 S. Ct. 909, reh denied 342 US 843, 96 L. Ed. 637, 72 S. Ct.21; United States v. O' Brien, 391 US 367, 20 L.Ed.2d. 672, 88 S.Ct. 1673, reh. den. 393 U.S. 900, 21 L.Ed.2d. 188, 89 S.Ct. 63; Joint Anti-

Fascist Refugee Committee v. McGrath, 341 US 123, 95 L. Ed. 817, 71 S.Ct. 624, Opinion of Justice Black; Communist Party of United States v. Subversive Activities Control Board, 367 US 1, 6 L.Ed. 2d. 625, 81 S. Ct. 1357, reh denied 368 US 871, 7 L.Ed. 2d. 72, 82 S. Ct. 20.

A claim that no group is being singled out for special pains and penalties by legislative act fails as no other state has singled out its attorneys to lose their right to work at the hands of legislative fiat or deprived those attorneys of their right to have their own admitting court hear and determine their cause prior to deprivation of their right to work and imprisonment. California attorneys are

the only attorneys targeted to suffer the pain and penalties of loss of work through judicial rule-making of a legislature and with no right to a judicial trial, thus causing California attorneys, as a class, to lose all rights to United States Constitutional due process of law. Ex Parte Garland, supra.

CONCLUSION

The prohibition of Bills of Attainder in the United States and the State Constitutions is intended to prevent the legislature from breaching the required separation of powers of the Judiciary, the Executive, and the Legislative branches of Government, by prohibiting the Legislature assuming the Judicial functions of guilt-

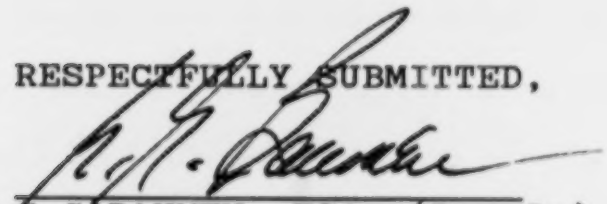
finding, trial, and punishment by legislative act.

It appears that the statutes aforesaid do attempt to invade the Judiciary's duty to establish the ethical rules for its Court Officers, allow a private legislatively-created State Bar Court to usurp the California Supreme Court's duties, and to take the liberty and property of California attorneys by legislative fiat and with no rights to a judicial trial or admitting court action.

As a result, Amicus requests this Honorable Court hear and decide the Petition and protect California attorneys from the enforcement and recognition of statutes that may not be given Full Faith and Credit or Comity

as they are unconstitutional Bills of Attainder.

RESPECTFULLY SUBMITTED,



G.G.BAUMEN, ESQ. (Pro Se)
Lawyer
1950 Sunset Boulevard
Los Angeles, Ca. 90026

213-484-9161

Amicus Curiae

VERIFICATION

I have read and prepared the foregoing Amicus Curiae Brief for Petitioner and Motion and declare under penalty of perjury that it's contents are true and correct, based on my own personal knowledge, information, and belief, and this Verification is executed this 13th day of November, 1990 1989 at Los Angeles, California.

RESPECTFULLY SUBMITTED,

G.G.BAUMEN, ESQ.(Pro Se)
Lawyer
1950 Sunset Boulevard
Los Angeles, Ca. 90026

213-484-9161

Amicus Curiae

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

MOTION FILED
NOV 20 1990

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER AT PETITION STAGE

BARRY D.AMMON, ESQ. (In Pro Se)
1430 Franklin Street
Suite # 208
Oakland, Ca. 94612

415-465-7900

Amicus Curiae for Petitioner
Attorney, Betsey Warren Lebbos

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

MOTION FOR LEAVE TO FILE AND BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER AT PETITION STAGE

Now comes Barry D. Ammon, a duly licensed California attorney and moves for leave to file the enclosed Amicus Curiae brief in support of Petitioner.

This Motion is filed as the Respondent, Massachusetts Supreme

Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as an attorney in California affected by the grant or denial of this Petition. As herein described, he is concerned with the California statutes which delegate the People's power to private persons, which appears invalid under the nine different rationales Amicus researched in the decisions of this Honorable Court concerning the Unlawful Delegation doctrine. This analysis should be helpful to the Court in deciding to take the Petition and rule the Full

Faith Faith and Credit Clause and Comity do not permit a state to recognize an alleged State Bar Court of the California State Bar Association.

For the foregoing, Amicus requests leave of Court to file the attached Amicus brief concerning those issues, which have not been presented by the parties in this manner.

RESPECTFULLY SUBMITTED,

BARRY D. AMMON, ESQUIRE (In Pro Se)
1430 Franklin Street
Suite # 208
Oakland, Ca. 94612

415-465-7900 (Amicus Curiae)

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER AT PETITION STAGE

BARRY D.AMMON, ESQ. (In Pro Se)
1430 Franklin Street
Suite # 208
Oakland, Ca. 94612

415-465-7900

Amicus Curiae for Petitioner
Attorney, Betsey Warren Lebbos

TABLE OF CONTENTS

Page

Questions Presented.....i

List of Parties..... ii

Interest of Amicus 1

Argument 2

I. The Statute creating a State Bar Court is void as an unconstitutional delegation of Public Power to private persons 2

A. The Factual framework-the Board of Governors of the state bar are private people 6

B. The 9 purposes of the Unlawful Delegation of Public power doctrine apply to void the statute directing 23 private persons to create a court 14

1. Delegations to private people gives them authority no other private person can possess 15

2. The Unlawful delegation doctrine is premised on not permitting a private person to ignore facts 21

3. The Unlawful delegation doctrine is concerned with private persons ignoring the rules of evidence 22

4. The Unlawful delegation doctrine is concerned with avoidance of hearings or inadequate or manifestly unfair hearings 25

5. The Unlawful Delegation doctrine is concerned with Capriciousness and self-interest 29

6. The Unlawful delegation doctrine is concerned with the arbitrary exercise of power 32

7. The Unlawful delegation doctrine is concerned with the denial of proper judicial investigation 38

8. The Unlawful Delegation of public power to private persons prohibits competitors and opponents running a private court to remove each other 40

9. Statutes without standards are an unlawful delegation 44

II. Conclusion 45

Table of Authorities

Cases:

Bock v. Lompoc City Council (1980) 167 Cal. Rptr [illegible], 109 C.A. 3d. 52 — 45

Brotsky v. state bar (1962) 19 Cal.Rptr.153,368 P.697, 57 C.2d.287, 94 A.R.R. 2d.1310 — 35

Browning v. Hooper, 269 U.S. 396 — 30

Burns Baking Co. v. Bryan, 264 U.S.504, 513. — 43

Carter v. Carter Coal Co. et. al. v. Helvering, Commissioner of Internal Revenue, al., 298 U.S.239 (1936) — 43

Chicago M. & St. P. Ry. Co. v. Minnesota, 134 U.S.418, 457, [illegible] — 39

Chronicle Publishing Corp. v. Superior Court in and for the City and County of San Francisco (1960) 7 Cal.Rptr.109, 354 P.2d.637, 54 C.2d.548. — 35

Coe v. Armour Fertilizer Works (1915) 237 U.S.413, 35 S. Ct.625, 629, 59 L.Ed.1027,1032 — 29

Conway v. State Bar 47 Cal. 3d 1107 (1989) — 24-27

Eubank v.Richmond, 226 U.S. 137,143 — 30,44

Fish v. State Bar of California, (1931) 4 P.2d. 937, 214 C. 215. 8

Freedom v. Maryland, 380 U.S. 51, 85 S.Ct.734, 13 L.Ed. 2d 649 (1965) 26

Fuentes v.Shevin, 407 U.S. 67, 93 37

Furman v. State Bar of California (1938) 83 P.2d.12, 12 C. 2d.212 36

Gibson v. Berryhill, 411 U.S. 564, 578-579 38,41

Hinds v. State Bar of California, (1941) 119 P. 2d. 134, 19 C. 2d.87 10

Hogan v. state bar (1951) 228 P.2d. 554,36 C.2d. 807 10

In re: Shattuck (1929) 279 P. 998, 208 C.6 10

Interstate Commission v. Louisville & N.R. Co., 227 U.S.88,91 4,22

Johnson v. State Bar of California, (1936) 52 P.2d. 928, 4 C.2d.744 8

Keller v. State Bar,(1990) 495 U.S....., 110 L.Ed. 2d. 1, 110 S. Ct.... overruling 767 P. 2d. 1020, 255 Cal. Rptr. 542 (1989) 7,8

Lebbos v. Judges, Santa Clara Superior Court, 883 F. 2d. 810 (Ninth) (1989) 43

Meyer v. Nebraska, 262 U.S. 390, 399-400. 38

Mitchell v. W. T. Grant Co. 416 U.S. 600, 615-617 38

Nashville Chattanooga & St. Louis Railway v. Walters, Commissioner of Highways, et. al. 294 U.S. 405 (1935) 37

Patrick v. Burget, U.S. 1988, 108 S.Ct.1658, 100 L.Ed.30 2d 83, rehearing denied, 108 S. Ct. 2921, 101 L. Ed.2d 952, on remand, 852 F. 2d 1241 41

Posner v. Lankenau Hospital, E.D, Pa. 1986, 645 F.Supp. 1102 42

Schechter Corp v. United States, 295 U.S., at p. 537 44

Seattle Trust Co. v. Roberge, 278 U.S.116, 121-122 29 44

Southern Railway Co. v. Virginia, 13,17,24 90 U.S.190 (1933) 16 21 31

Tambone v. Memorial Hospital for McHenry County an Illinois corporation, 635 F. Supp. 508 (N.D. Ill.) 41

Tumey v. Ohio, 73 U.S. 510, 47 S.Ct. 437, 27 L.Ed.749 (1927) 36

Wilner v. Committee of Bar Examiners, 373 U.S. 105 24

Washington ex. rel. Seattle Title Trust Company, Trustee, etc. v. Roberge, Superintendent of Building of Seattle, 278 U.S.116 (1928) 2,31

Werner v. State Bar of California (1939) 91 P.2d. 881, 13 C.2d. 666 8

Yick Wo v. Hopkins, 118 U.S.356,366,368 30,32

United States Constitution:

Amendment five 5

Amendment fourteen 5

California Constitution:

Article 2, section 8 6

Article 6, Section 1 17,23

Article 6, Section 6

Article 6, Section 9 9-11,14,17

Ca. Business and Professions Code sections :

Section 6001 23,32

Section 6007 (c) 7,12,13,18

Sections 6010-6015 47

Section 6086.5 4,7,17,18,19

Section 6140 17

Ca. Evidence Code:

Section 702 24

Section 1200 24

State Bar Rules of Proce ure :

Rule 2.22 101-20

Rules 110-112 18,20

Rules 460-464 36

Rule 556 33

Rule 555 33

Rules 789-799 29,31,33

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

Interest of Amicus

Amicus is interested in the hearing of the Petition as a California attorney concerned about the rules and who licenses him.

He therefore submits the attached concerning the unconstitutionality of the State Bar Court under the Unlawful Delegation doctine. All references hereinafter to " section (s) " or " sec." refers to sections of the California Business and Professions Code.

ARGUMENT

The Statute creating a State Bar Court is an unconstitutional delegation of Public Power to private persons

The Due Process and Equal Protection clauses of the United States Constitutions prohibit state statutes which delegate to private persons the Public power of the People. Washington ex. rel. Seattle v. Roberge, 278 U.S.116 (1928).

At issue is a statute which provides, " The Board of Governors (of

the California State Bar Association) shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of governors by this chapter, including those powers and that authority vested in committees of, or established, by the board, except as limited by the rules of the board of governors within the scope of this chapter. For purposes of sections 6007,6049, 6049.2, 6050,

6051, 6052, 6077 (excluding the first sentence), 6078, 6080, and 6082, " board " includes the State Bar Court. Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure. The Executive Committee of the State Bar Court may adopt rules of practice for the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court." Section 6086.5.

Several serious constitutional issues arise. If the legislature may create a new court, but the Constitution provides the state bar is a corporation, may the legislature change the state bar from a

corporation into a court or authorize this corporation to create a court ? May it delegate the power to create a court to a private membership board of a bar association? May it delegate to private, unelected persons the making of a court ? May it transform a non-judicial body into a court ? May it create a court, whose composition is dependent, not on the voters, but on appointees or nominees of the private board ? May it create a court run and controlled by a private membership board ? May it create a court that is dictated to by the rules of procedure of a bar association and which may not establish or adopt either its own or the rules applicable to all other courts of law in the state ?

Art. 2, sec. 8 of the California Constitution states " All political power is inherent in the People. Government is constituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require."

Such is the rationale as to why the People have not authorized other private citizens to be allowed to take the liberty or the property of other citizens and which prohibit state-sanctioned branches of power delegating the People's express and limited authorization to them to those they have not authorized, to wit, private, non-publically responsible persons.

A. The Factual framework-the Board of Governors of the state bar are private people

The conceptual framework is muddied in dealing with the state statute permitting the 23 member Board of the California State Bar Association to create a State Bar Court. Sec. 6086.5.

The California state bar association is composed of private attorneys. Art. 6, sec. 9, Ca. Consti, yet its governing board includes six non - lawyers who are appointed by state governmental officials by statute. Sec. 6010-6015.

What permissible public auththority does the California State Bar have ? This Court's Keller decision indicates its role is not to be part of the government of a state, but to provide advices to those responsible for

governing the legal profession. Keller v. State Bar, (1990) 495 U.S.____, 110 L. Ed. 2d. 1, 110 S. Ct.____, overruling 767 P.2d. 1020, 255 Cal. Rptr. 542 (1989).

The California State Bar Association is constitutionally prohibited from admitting or disciplining attorneys. Sections 6067, 6078; Werner v. State Bar of California (1939) 91 P.2d.881, 13 C.2d. 666; Johnson v. State Bar of California, (1936) 52 P.2d.928, 4 C.2d.744; Fish v. State Bar of California,(1931)4 P. 2d. 937, 214 C.215.

Private attorneys are not elected to serve any public office for the people. They are those who are admitted to practice law for private or public suitors, at the at-

torney's discretion, solely by reason of qualification to serve as " Court Officers " under the jurisdiction of the judicial branch of government and by the act of admission by the state supreme court. Section 6064. The attorney's oath is a private oath that is inscribed on their license. Section 6067. That oath is to support the Constitution of the United States and of the State and to faithfully discharge their duties to the best of their knowledge and ability. Section 6067.

No where is there any oath to support any public entity or being. Confusion has arisen in California, unlike other states that recognize a bar association is solely a private group of opponents and compet-

itors, in that the legislature has passed statutes claiming the state bar is a " public corporation." Ca. Consti., Art. 6, sec. 9, and sec. 6001.

It is clear that the word, " public," refers to purpose and not power as the Public never authorized the state bar to perform any public functions for it. Art. 6, sec. 9, Ca. Consti.

The California Constitution gives the state bar no public authority. Art. 6, sec. 9, Ca Consti. Its role is advisory only. Hinds v. State Bar of California, (1941) 119 P. 2d. 134,; In re: Shattuck (1929) 279 P. 998,; Hogan v. State Bar (1951) 228 P.2d. 554,36 C.2d. 807.

What has occurred, however, is

that this limited public role of being advisory to the state supreme court in individual discipline, has been converted into a claim by the State Bar that they have other and multiple assigned public duties and roles, which the People have never authorized it to perform for them and which exceed any limited constitutional existence for said entity. Art. 6, sec. 9, Ca. Consti.

In all other respects, other than advices concerning individual discipline, they are solely private, unelected and non-accountable private persons, just like any other citizen who is not elected to office, not removable from office, and not accountable to any public will or mandate, and unaudited by

both the state and federal governments and not subject to any audit by its compelled membership. Sections 6010- 6015.

The Board is a mixed composition of attorney members who are elected by districts by other attorneys and political appointees of the governor, a person in the state senate and a person in the state assembly. Sections 6010-6015. One-fourth of the board (6 out of 23) are appointed by state politicians from other branches of government, not associated with the Judicial branch of government.

This places an irreducible pressure for the Judicial and limited role of the State Bar to be overcome with conflicting desires of those in the executive and legis-

lative branches of government who sit on this board. This placement of those in other branches of government in a governing posture to attorneys whose role is not in those branches of government is not by the will of the members but solely by legislative fiat. Sections 6010-6015.

Presently there are no rights to self-determination or open and equal voice of the compelled members. Sections 6010-6015.

What has never been addressed is that the legislature may have no right to dictate who sits in a private membership group. This appears ultra vires their limited role to pass statutes in aid of discipline of members, but not in contravention of the rights of the

private members to determine their own form of organization through their own self-determination and the duty of the private members to perform their duties solely in the judicial branch of government, and not be impressed into state service for the legislature.

Statutes, such as section 6031, in which the legislature wishes to specify the state bar have a role for it, appear unconstitutional as in direct violation of the intent of Art. 6, sec. 9 of the California Constitution that the state bar's role is limited to the Judicial branch of government and is not in any other branch of government.

B. The 9 purposes of the Unlawful Delegation of Public Power Doctrine apply to void the statute directing 23 private persons to create a court

The due process of law doctrine that prohibits statutes that unlawfully delegate to private persons the power of the People is grounded in a fear of private usurpation of public power without accountability

Such appears clear here. Amicus discerned, in this Honorable Court's decisions, 9 different rationales given for the doctrine. All appear to apply to invalidate the California state statutes, sections 6086.5 and 6079.1, permitting 23 private persons to create a State Bar Court and which preclude its recognition in another state.

1. Delegations to private people gives them authority no other private person can possess

Consistent with the idea that a public official has a limited pub-

lic role, and that, when he acts outside that role, he acts as a private person to whom the doctrine of unlawful delegation of public authority applies, a statute which delegated to an administrative officer in the executive branch the power to take railway property if and when he deemed it advisable was held to be void under the fourteenth amendment in Southern Railway Co. v. Virginia, (1933) 290 U.S. 190, at 194. Is this case not authority for the proposition that the advisory role of the California State Bar Association in individual discipline does not permit their private board to create their own Court ?

In the instant case, the power of the people to create their own

courts, which accrues to 30 million citizens under Art. 6, sec. 1, Art. 2, section 8, Ca. Consti. and Amendments five and fourteen of the United States Constitution is delegated first to approximately 80 assemblyman and 40 senators. Section 6086.5. Then this group of 120 delegate the power of 30 million to 23 private persons. These 23 have no constitutional authority to create a court. Art. 6, Sec.1 and 9, Ca. Consti. They, however, have purported to create a privately-run and privately-financed State Bar Court. Sections 6086.5, 6140.

The 23 persons then delegate to an alleged presiding judge of this alleged State Bar Court the power to choose " no fewer " than 7 other private persons, to set up and run

this private court. Sections 6086.5, State Bar rules of procedure, rules 110-112.

The power of 30 million is, in fact, diluted to one private person. He is not a judge as the voters have not authorized such a judge to exist in accordance with Art. 6, sec.16 of the California Consti.; sections 6086.5, 6010-6015; State Bar rules of procedure, rule 110-Composition of Executive Committee, and rule 111-functions.

The subdelegations are multiple and not based on an apparent logic. The alleged State Bar Court appears to be run, controlled and operated by 4 private persons- 4 non-judicial, lawyer or non-lawyer volunteers of the State Bar association. All but one is selected by an al-

leged presiding judge. He or She is never elected and not removable by the People as required by Art. 6, Sec. 16 of the California Constitution. He or she is solely appointed by the state supreme court. This appointment is solely through the pre-screening of the Board. The People of the state and the compelled members are allowed no input. The only input is from the State Bar prosecutors. The alleged State Bar Court appears run and manned by four private persons chosen on behalf of the State Bar prosecutors. (1)

The Presiding Referee who runs

---

(1) Section 6086 states," The Executive Committee of the State Bar Court may adopt rules of practice ....The(y) may not conflict with the rules of procedure adopted (continued on next page)

the State Bar Court is referred to under Rule 2.22 of the State Bar rules as " the presiding officer of the Executive Committee."

The Presiding Referee appears to be chosen by the Board. Rule 101.

---

(1) (continued from prior page) by the board, unless approved by the Supreme Court." Rule 110 provides, " The Executive Committee ..shall consist of no fewer than seven persons appointed by the presiding judge... Rule 111 states: " The Executive Committee " (1) shall be responsible for the administrative processing of all proceedings...(2) May issue policy memoranda or rules of practice ...within the jurisdiction of the State Bar Court..including...calendaring, extensions of time, continuances, entry of and relief from default for non-appearance, approval of agreements for stipulated facts and discipline, discovery motions and forms of process, notices, decisions and recommendations; 3) May provide formal programs for the information and training of newly appointed referees ... 4) Shall make statistical and other reports to the Board of Governors; 5) may create departments pursuant to rule 101; 6) may conduct studies and make plans and (continued next page)

2. The Unlawful Delegation doctrine is premised on not permitting a private person to ignore facts

Both the Southern Railway decision, supra, and Interstate Commission v. Louisville & N.R. Co., 227 U.S.88, 91, express concern that unlawful delegations to private persons permit a private person to

(1) (continued from prior page)

recommendations for the effective discharge of the duties of the State Bar Court." State Bar rule 112 provides that the Executive Committee may act on all of the above matters by a majority vote of 4 persons. The Presiding Referee presides on the executive committee, appoints committees, exercises " general direction over and supervision of staff attaches assigned to the State Bar Court;" provides for and supervises calendar management, and the assignment and calendaring of all matters within the jurisdiction of the State Bar Court (and) provide (s) for and supervises the assignment of referees to departments and panels; represents the State Bar Court in State Bar budgetary matters. State Bar rule of procedure, rule 113.

ignore the facts of a matter. Applicable to this case, it would appear that private volunteers who are not pre-screened for competency may ignore facts and take careers.

3. The Unlawful delegation doctrine is concerned with private persons ignoring the rules of evidence

Two aspects are applicable to the statute creating a State Bar Court which involve the concern of a private person ignoring rules of evidence. The first concern was above stated in Interstate Comission v. Louisville & N.R. Co., 227 U.S. 88, 91, as follows:

" It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat."

The second concern is that these private persons may create a court

with no adherence to the rules of any other court. It has exempted itself from the rules of due process, including those of evidence, applicable to all other courts. Sec. 6001. It has exempted itself from the Rules of Court applicable to all other courts as well as the constitutionally-mandated jurisdiction of the Judicial Council and its required rules for all courts. Section 6001; California Rules of Court, and Ca. Consti., Art. 6, sec. 6. Although the State Bar is an administrative arm to the state supreme court, it has also exempted itself from the required rules applicable to all other state administrative agencies and boards, which are governed by the administrative procedures act. Sec. 6001.

In fact, the State Bar Court is already governed by rules that are in conflict with and contrary to the established rules of evidence for all courts. Whereas hearsay is inadmissible in a court of law, unless there is a recognized statutory exception, the Conway v. State Bar decision at 47 Cal. 3d. 1107, allows the taking of careers by a volunteer of the alleged State Bar Court on hearsay. Evidence Code sections 702, 1200.

Whereas cross-examination and confrontation have been held to be constitutionally required for all courts, as part of the constitutional protections due lawyers, Wilner v. Committee of Bar Examiners, 373 U.S. 105, and state law provides that " At the trial of an

action, a witness can be heard only in the presence and subject to the examination of all the parties to the action...," the State Bar Court claims it is controlled by state statutes and rules that abrogate those constitutional and statutory protections for lawyers. Conway, supra.

Thus, the fear that unlawful delegations of power to private people will result in non-adherence to established rules, either of due process or of evidence, is a reality in the operations of the alleged State Bar Court.

4. The Unlawful delegation doctrine is concerned with avoidance of hearings or inadequate or manifestly unfair hearings

When private, unsupervised, and unmonitored persons who are not

publicly accountable, either by voter approval or by state supervision or audit, are given power, they tend to exercise power without prudence or restraint. This principle was best stated in Freedom v. Maryland, 380 U.S. 51, 85 S.Ct.734, 13 L.Ed. 2d 649 (1965). The court invalidated a system such as " involuntary, inactive enrollment" as an invalid prior restraint and stated the reasons therefor as follows:

" Unlike a prosecution for obscenity, a censorship proceeding puts the initial burden on the exhibitor or distributor. Because the censor's business is to censor, there is the danger that he may well be less responsive than a court - part of an independent branch of government - to the constitutionally protected interest of free expression And if it is made unduly onerous, by reason of delay or otherwise, to seek judicial review, the censor's determination may in practice be final."

Thus, when prior restraints on constitutionally protected rights are involved; a) the burden is on the censor to prove the conduct is not protected and not on the attorney to prove it is protected, b) the censor is not permitted to alter the status quo, to wit, the right to work, c) the censor either allows the continuation of the protected activity or goes to court to attempt to restrain the right to work, and d) in all events, only a prompt and final judicial determination in an adversary proceeding, satisfies due process of law. Only the Court has the necessary sensitivity to freedom of expression. Only a procedure that ensures a judicial determination may impose a valid, final restraint.

The rationale behind voiding unlawful delegations of power to private persons, such as the ability to create a court, is because they tend to exercise maximum power, rather than possessing the required balance and attendance to the independence of the Judiciary required of all courts of law.

That unrestrained power is being exercised by the State Bar Court is evidenced by its abolition of some hearings and of state and constitutional law notice and service requirements. When hearings are allowed, they are not subject to the norms of procedural and substantive due process of law applicable to hearings in a court of law. (2)

(2) The involuntary inactive enrol-
(continued next page)

When private people wield public power, these dangers are common.

5. The Unlawful delegation doctrine is concerned with Capriciousness and self-interest

Statutes which delegate public power to private persons are unlawful as they encourage capriciousness and self-interest. This principle was best stated in Seattle, supra, at p. 120:

" The section purports to give the owners of less than one-half the land within 400 feet ...- uncontrolled by any standard or rule prescribed by legislative action-

(2) (continued from prior page) lment statute has no notice or hearing standards. It thus appears facially unconstitutional. Coe v. Armour Fertilizer Works (1915) 237 U.S.413. State Bar Rules 789-799, provide for notice by a mailing without proof of receipt, permit a disqualified prosecutor claiming to mail the original notice, waive hearings by silence, deny confrontation and cross-examination, and allow any non-lawyer volunteer to take careers ex parte for his Harm to his " Public." Conway, supra.

> the power to prevent the trustee from using its land for the proposed home...They are not bound by any official duty, but are free to withold consent for selfish reasons or arbitrarily and may subject the trustee to their will or caprice. Yick Wo v. Hopkins, 118 U.S. 356, 366, 368. The delegation of power so attempted is repugnant to the due process clause of the Fourteenth Amendment. Eubank v.Richmond, 226 U.S. 137,143. Browning v. Hooper, 269 U.S. 396."

In this case, the statute permitting 23 private persons to create a court permits the claims of judicial powers that normally accrues to real courts of law to be possibly used for selfish and capricious purposes of the 23, for friends or family members or business associates. The involuntary inactive proceedings are based on taking the right to work of any attorney by any volunteer of the alleged State Bar Court on a vague and indefinite

standard which permits any selfish, self-motivated private person to destroy any career for conduct posing a substantial threat of harm to the interests of his personal, private and subjective " Public." Sections 6086.5, 6007 (c).

By not only delegating to the 23 private persons the ability to create a court, but also their ability to delegate their offical board functions to it, this replaces a 23 member board's required action with the action of only one volunteer of the State Bar Court. Section 6086.5, State Bar rules of procedure, rules 789-799. This leads to that which was condemned in both Washington supra, and the Southern Railway decision, supra: uncontrolled capriciousness.

6. The Unlawful delegation doctrine is concerned with the arbitrary exercise of power

As in Yick Wo v. Hopkins, 118 U.S. 356, an ordinance which forbids a thing, but then gives unfettered discretion to others to waive the prohibition for those whom it pleases, leads to the exercise of arbitrary power. The statute allowing 23 private people to create a court, but they then, by rule, delegate to the State Bar prosecutorial unit the power to establish the rules of this alleged court, permit arbitrary and unequal applications of the law to different attorneys.

Section 6001 exempts the State Bar, which includes its alleged State Bar Court, from the due process restrictions applicable to all courts and state bodies. Then

State Bar rule of procedure, rule 556, states that the " rules of evidence are generally applicable." It then states the rules of evidence do not apply to rule 555 proceedings. That means if an unscrupulous or bribed examiner claims he mailed a letter, but he did not do so, that when he then takes the attorney's default without notice, that he may then enroll the attorney as inactive, bankrupting the attorney without notice or hearing and recommend disbarment without any adherence to any rules of evidence and without any evidence. State Bar rule of procedure, rules 555, 789-799.

Rule 556 goes on to state that " the rules of evidence in civil cases in courts of record in this

state shall generally (emphasis added) be followed." What is generally followed ? Sometimes ? Not at all ? If the volunteer feels like it ? The State Bar Court rules give unbridled discretion in its personnel to violate the rules applicable and which are binding on all courts of law and administrative bodies and deny any attorney the right to have the rules of evidence applicable to him.

The dangers of an unbridled court which knowingly claims it is not bound to follow rules applicable to courts of law is that it is seeking to change, not just its title, but the due process rights of attorneys to be judged by a competent court of law with with the required De Novo review of facts and the law.

Instead of the required standard of review of De Novo, which applies to review of licensing by administrative agencies by a court of law, it appears to seek to impose on lawyers an " abuse of discretion " standard. This would appear to eliminate review for error of law or under the " substantial evidence" test. State bar rule 556 appears to invalidate not only the De Novo review required standard, but impose solely an " abuse of-discretion " standard, when a court of law reviewing a lower court is not bound to that sole grounds of review. Brotsky v. state bar (1962) 19 Cal.Rptr. 153, 368 P.2d. 697, 57 C.2d. 287, 94 A.R.R. 2d.1310; Chronicle Publishing Co. supra.

In Furman v. State Bar of California (1938) 83 P.2d.12, 12 C.2d. 212, the court stated, " A disbarment proceeding is quasi-criminal in character and, although it is not essential that the guilt of the accused be established beyond a reasonable doubt, nevertheless his guilt must be established by convincing proof to a reasonable certainty." State Bar rule of proceddure rule 555 appears to seek to overrule that decision. (3)

---

(3) The rules of the State Bar Court are written by the prosecutors. State bar rules of procedure, Rules 460-464, which permit the prosecution to collect costs if an attorney is found guilty of one charge, while denying to attorneys their right to collect their costs on all charges in which they are exonerated, suggests a denial of equal protection of the law. Refer Tumey v. Ohio, 73 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927) prohibiting such a court with pecuniary interest.

In Nashville Chattanooga & St. Louis Railway v. Walters, Commissioner of Highways, et. al. 294 U.S.405,(1935), the court considdered whether the legislature could require a railway company to pay one-half of the expense of obviating a grade crossing. The Court stated that, although a statute may be perfectly valid on its face, yet, applied to given facts, be invalid. The Court went on to state that " the police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably," at p.415. In Fuentes v. Shevin, 407 U.S. 67, 93, the United States Supreme Court condemned state law which delegated to private persons the power to perform state functions, as follows

at p.93:

> " The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. There is not even a requirement that the plaintiff provide any information to the court on these matters. The State acts largely in the dark."

To like effect are Mitchell v. W. T. Grant Co., 416 U.S. 600, 615-617; Gibson v. Berryhill, 411 U.S. 564, 578-579.

7. The Unlawful delegation doctrine is concerned with the denial of proper judicial investigation

The statute permitting 23 private persons to create a privately-financed private court peopled with alleged " judges" solely of its own

selection and no general in-put and no voter approval runs afoul of the unlawful delegation of power doctrine as it denies to attorneys, witnesses, clients and the Public rights to proper judicial inquiries.

In Chicago M. & St. P. Ry. Co. v. Minnesota, 134 U.S.418, 457, 458, an act of the Minnesota legislature which permitted a commission to finally fix railway rates without notice was declared invalid as follows:

> " It deprived the company of its right to a judicial investigagation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot

be regarded as clothed with judicial functions or possessing the machinery of a court of justice... "

It is clear a state statute allowing private, unregulated, unmonitored and unsupervised persons the power to create a private court ignores the proper and acceptable, democratic method of creating judicial machinery.

8. The Unlawful Delegation of public power to private persons prohibits competitors and opponents running a private court to remove each other

Much of the concern that the unlawful delegation doctrine addresses is that private opponents and competitors will thereby be permitted to treat their own competition or opponents unfairly. This is both an offshoot of the requirement that those who take

property must be neutral, detached, and not personally or financially involved as a component of due process of law, Gibson v. Berry-hill, supra, and the necessary enforcement of the prohibition of the Sherman Anti-trust Act, which outlaws all " combinations and conspiracies in restraint of trade," and which questions the concept of " state bar courts."

It is similar to the prohibited takings of a doctor's right to work in a hospital by a " peer review " panel run by the doctors's com petitor doctors. Patrick v.Burget, U.S. 1988, 108 S.Ct.1658, 100 L.Ed.2d 83, rehearing denied, 108 S. Ct. 2921, 101 L. Ed. 2d 952, on remand, 852 F. 2d 1241; Tambone v. Memorial Hospital for McHenry

County an Illinois corporation, 635 F. Supp. 508 (N.D.Ill.), Posner v. Lankenau Hospital, E.D, Pa. 1986, 645 F. Supp. 1102; refer sections 6007 (c), 6125, 6126 (b).

The state statute permitting only 17 private opponents and competitors of other lawyers, togeth with 6 lay persons appointed by state representatives of the Executive and Legislative branches, to create a private competitor and opponent court empowered under sections 6007 (c) and 6084, to disbar or suspend the right to work of any of their own opponents and competitors appears prohibited as the unlawful delegation of public power to private opponents and competitors. (4)

The principle was well stated

in Carter v. Carter Coal Co. et. al. v. Helvering, Commissioner of Internal Revenue, v. Carter et. al., 298 U.S.239 (1936), as follows, at p. 310-311, wherein the

(4) Amicus believes the Lebbos' facts suggest the State Bar Court violates the Sherman Anti-Trust Act. The letter from the state bar court to the state supreme court identifies the state bar's complaining witnesses as Attorneys John Miller, Maryann Grilli, and Jeradlin Spradlin. They are her opponent and the defendant attorneys in her 1986 federal suit now pending. Lebbos v.Judges, Santa Clara Superior Court, 883 F.2d.810 (Ninth) (1989). At the same time, the state bar that brought the charges was also the defendant and opponent to Lebbos in her action to void their entry in 1986 of an ex parte $ 32,676 judgment. Lebbos v. State bar, Sixth Appellate District Court, Docket no. H003074.

The decision for Lebbos in the Sixth Appellate District and in the Ninth Circuit against the state bar and against their complaining witnesses suggest the charges may have been filed in an effort by these opponents to prevent Lebbos from prevailing against them in the state and federal courts of appeal.

Court invalidated a scheme where a majority of manufacturers could set the hours and wages of workers of other manufacturers. In doing so, the Court stated the following :

" ...in the very nature of things, one person may not be entrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the fifth amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question. Schecter Corp v. United States, 295 U.S., at p. 537; Eubank v. Richmond, 226 U.S.137, 143; Seattle Trust Co. v.Roberge, 278 U.S. 116, 121-122."

9. Statutes without standards are an Unlawful Delegation

Statutes are unconstitutional when they delegate public power to others and have inadequate stan-

dards or guidelines. Bock v. Lompoc City Council (1980) 167 Cal. Rptr. 43, 109 C.A. 3d. 52.

The statute directing the Board of the State Bar to create a State Bar Court has no standards, no guidelines, no safeguards.

Conclusion

Amicus requests this Honorable Court hear the Petition and rule that the United States Constitution does not permit a state to recognize a private bar association court created by 23 private citizens.

RESPECTFULLY SUBMITTED,

BARRY D. AMMON, ESQUIRE (In Pro Se)
1430 Franklin Street # 208
Oakland, Ca. 94612
415-465-7900

Amicus Curiae

MOTION FILED
NOV 20 1990

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF
MASSACHUSETTS

Respondent

MOTION FOR LEAVE TO FILE AND AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

JOHN B. GUNN, ESQ.(Pro Se)
JOHN B.GUNN LAW CORPORATION
111 N. Market Street
Suite 707
San Jose, Ca. 95113

408-298-5888

Amicus Curiae
for Petitioner

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER

Now comes John B. Gunn, a duly licensed and practicing California attorney and counselor at law, and requests leave of court, pursuant to United States Supreme Court Rule 37, to file an Amicus Curiae brief at the Petition stage in support of this Honorable Court's grant of the

Petition for a Writ of Certiorari and for Petitioner, Attorney Betsey Warren Lebbos.

The Petition should be granted to vacate a judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts giving Full Faith and Credit to California statutes while not recognizing the California Constitution's prohibitions on said statutes and which declined to consider the unconstitutionality of the California statutes creating an alleged State Bar Court under the United States Constitution.

Amicus wishes to appear and address an issue of substantial importance, but which appears somewhat overlooked to date. That issue is the unconstitutionality and non-recognition of the alleged

State Bar Court due to its creation in conflict with Article 6, sections 1, et. seq. of the California Constitution by asserting it has a) co-extensive and co-equal subject matter jurisdiction over licensing of lawyers to that of the State Supreme Court, and b) co-equal and co-extensive subject matter jurisdiction to try the merits of law suits pending in the constitutional courts of law.

Amicus believes it is essential that there not be conflicting claims to original jurisdiction over a subject matter, forcing attorneys to try their cases in two jurisdictions at once. Amicus further submits that when one of the entities claiming jurisdiction has none and is not empowered

to either assert such subject matter jurisdiction or act on it, yet it can divest the real court of its subject matter jurisdiction, as it did in the Lebbos case, by merely ex parte preventing the attorney from appearing and arguing the case in the real court of law, a serious problem arises of the supremacy of the Constitutional Courts of Law. That serious problem mandates a declaration that the State Bar court is a Nullity in the law and that it was an error of law to grant a judgment based on a claim of recognition by another state to such an unconstitutional court and entity.

Amicus submits that the Full Faith and Credit clause required Massachusetts to recognize the

California Constitution as a " public act, record, or judicial proceeding, " and not statutes in conflict with it. Our state Constitution is the first public act to recognize. The Court thus erred in refusing to recognize any Constitutional challenges when our State Constitution is the first document to recognize and it prohibits the legislature creating any courts at all and ordered the state bar to be a corporation, and not a court. Our only permitted Courts are completely listed in our Constitution as our People abolished all legislative authority to create any new ones 24 years ago. Article 6, Section 1, Ca. Constitution.

This motion is filed now in order to comply with the deadline as the opposing party, Supreme Judicial Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as a lawyer for 33 years in California affected by the grant or denial of this Petition. He wishes to bring to the Court's attention the relevant historical material, which has not already been brought to its attention and which has not been raised by the parties, except indirectly by Petitioner.

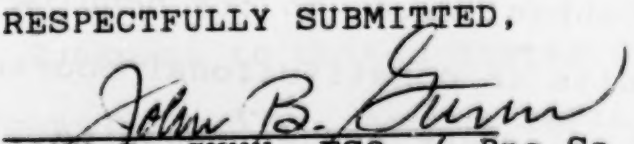
That relevant information concerns the need for this Court to

void the State Bar Court of the California State Bar Association by reason of its lack of any constitutional subject matter jurisdiction, and how it is seeking, as it did in the Lebbos' case, to try pending lawsuits in constitutional courts at the request of her opposing counsel, and is not only acting as a private opponent and competitor court, but is displacing our real courts of law.

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity or Full Faith and Credit may be applied to statutes creating an alleged State Bar Court of the California State Bar Association, a private organization. Amicus re-

quests the Petition be granted so that attorneys are not forced to try their cases in two alleged courts at the same time and lose their right to work if they refuse to do so.

RESPECTFULLY SUBMITTED,



JOHN B. GUNN, ESQ. (Pro Se)
JOHN B.GUNN LAW CORPORATION
111 N. Market Street
Suite 707
San Jose, Ca. 95113

408-298-5888

Amicus Curiae
for Petitioner

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

MOTION FOR LEAVE TO FILE AND AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

JOHN B. GUNN, ESQ.(Pro Se)
JOHN B.GUNN LAW CORPORATION
111 N. Market Street
Suite 707
San Jose, Ca. 95113

408-298-5888

Amicus Curiae
for Petitioner

QUESTIONS PRESENTED

1. May a State give Full Faith and Credit to statutes but not to a State's Constitution ?

2. May a State recognize state statutes creating a State Bar Court while the State Constitution does not have such a Court listed and abolished all legislative authority to create any new ones 24 years ago ?

3. Is Due Process violated by state statutes which give private persons in a trade group the power to create a private court with no subject matter jurisdiction ?

4. May attorneys lose their right to work nation-wide by refusing to try their pending suits before a private trade group court ?

LIST OF PARTIES

The parties in the

Petition for a Writ of Certiorari

are as follows :

BETSEY WARREN LEBBOS, ESQ.
P.O. Box 40
New Almaden, Ca.
95042-0040

Petitioner Attorney

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The
Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent Court

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Respondent Bar Counsel

Table of Contents

Questions Presented.....1
List of Parties.....ii
Amicus' Interest in Issues..... 1
Argument 2

I. The State Bar Court is Unconstitutional as it seeks to claim to have and to divest the real courts of law of their original subject matter jurisdiction 2

A. Since the first principle is that a court must be one of competent jurisdiction, and the alleged State Bar court is not one, it is void 2

B. The state bar's limited role is as an advisory administrative arm of the California Supreme Court, and perhaps now to the Court of Appeals, which are the only courts of competent jurisdiction involved in attorney discipline 5

C. The State Bar Court is Unconstitutional as it claims to divest the state Supreme Court or the court of appeals of their exclusive subject matter jurisdiction over attorneys 15

D. The State Bar Court is Unconstitutional as it claims to supplant the original subject matter jurisdiction over civil lawsuits reserved to the real courts of law 29

II. Conclusion 42

Table of Authorities

Cases :

Brotsky v. State Bar (1962) 57 Cal.2d.287 — 12,13

Byryondonjack v. State Bar (1929) 208 Cal.439,281 P. 1018 — 12

Clark v. State Bar 246 P.2d. 1, 39 C.2d.161 (1956) — 42

Concord Casualty and S. Co. v. United States, (C.C.A.) 69 F. 2d.78, 91 A.L.R. 885 — 45

Conway v. State Bar, 255 Cal. Rptr. 390 (Cal.1989) — 15,18

Ex Parte Bradley (US) 7 Wall. 364, 19 L.Ed. 214 — 3

Fauntleroy v.Lum, 210 US 230, 52 L.Ed.1039; 28 S.Ct. 641 — 3

Fish v. State Bar of Californ- ia, (1931) 4 P.2d. 937, 214 C. 215 — 14

Gallagher v. Municipal Court of the City of Los Angeles, (1948) 192 P.2d. 905, 31 C. 2d. 784 — 42

Hogan v. State Bar, (1951) 228 P. 2d.554, C. 2d.807 — 18

Hustedt v. Workers Compensation Appeals Bd., (1981) 30 Cal. 3d. 329,337, 178 Cal. Rptr. 801, 636 P. 2d.1139 — 12

In re: Cate, (1928) 273 P. 617, supplementing opinions 270 P. 968 and 271 P. 356 7

In re Jones, (1971) 5 Cal. 3d. 390, 394, 96 Cal. Rptr 448, 487 P. 2d. 1016. 20

In re Lavine (1935) 2 Cal. 2d. 324, 328, 41 P. 2d. 161 12

In re: Lowenthal, (Sup. 1894) 37 P. 526 42

In re: Shattuck (1929) 208 Cal. 6, 12, 279 P. 998 13

Kitsis v. State Bar, (1979) 153 Cal. Rptr. 836, 592 P. 2d. 323, 23 C.3d.857 28

Kohr v. Kohr (1963) 31 Cal. Rptr. 85, 216 C.A. 2d. 516 42

Lady v. Worthington (1944) 143 P. 2d. 1000, 61 C.A. 2d. 780 29

Lathrop v. Donohue, 367 U.S. 884 (1961) 20

Lebbos v. Judges, Santa Clara Superior Court, 883 F. 2d. 810 (Ninth) (1989) 34 35 41

Lee v. State Bar of Cal. (1970) 88 Cal. Rptr. 361, 472 P. 2d. 449, 2 C. 3d. 927 28

Martin v. Hunter (US) 1 Wheat 304, 4 L. Ed. 97 3

Nesblett v.State Bar of California, 109 P. 2d.340, 17 C. 2d. 77 (1941) 43

People v. Wheeler, (1952) 249 P. 2d. 299, 113 C.A. 2d. 881 41

Philadeplphia W and B. R. Co. v. Trimble (US) 10 Wall. 367, 19 L. Ed. 948 3

Platnauer v. Superior Court in and for Sacramento County (1917) 163 P. 237, 32 C.A. 463 42

Prantil v. State Bar, (1979) 152 Cal. Rptr. 351,589 P. 2d. 859, 23 C. 3d. 243 42

Schecter Corp. v. U.S. 295 U.S. 495 21

Spindell v. State Bar, (1975) 118 Cal. Rptr. 480, 530 P. 2d. 168, 13 C. 3d. 25 28

Sullivan v. State Bar (1946) 170 P. 2d. 888, 28 C.2d. 488 42

Valley v. Northern F and M Co., 254 US 348, 65 L.Ed.297, 41 S. Ct.116 3

Walling v. Benson (CA 8 Mo.) 137 F. 2d. 501, 149 ALR 186, cert. denied 320 US 791, 88 L. Ed.476, 64 S. Ct. 206 5

Wyatt v. Stephens (1894) 36 P. 586, 102 C. 264 42

United States Constitution :

Fifth Amendment 2

Fourteenth Amendment 2

California Constitution :

Article 2, section 8 18

Article 3, section 3 11

Article 3, section 3.5 26

Article 4, section 1 4,18

Article 6, section 1 1,18,23

Article 6, section 9 5,16,23

Article 6, section 16 18,23

Ca. Business and Professions Code Sections :

Section 6001 9

Section 6002 24

Section 6007 15

Section 6007 (c) 21

Section 6043 22

Section 6044 23

Section 6049 23

Section 6049.2 24

Section 6050 25

Section 6051 25

Section 6052 25

Section 6068 (f) 33

Section 6077 25

Section 6079 15

Section 6079.1 15

Section 6082 15,17

Section 6084 (a) 15,28

Section 6086 15

Section 6086.5 15,27

Section 6125 15

Section 6126 (b) 15

Ca. Code of Civil Procedure :

Section 170.1 et. seq. 33

Books :

1 Am.Jur. 2d. section 19," 6
Administrative Law."

Witkin, California Procedure, 18
Volume 2, " Courts," p.153-171,
182-184, 188, 190, 194, 204.

Articles :

Blume, " California Courts in Historical Perspective," 22 Hastings Law Journal 121 18

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

I.

Amicus' Interest in Issue

Amicus is interested in the Petition as one of 125,000 California attorneys immediately impacted by claims to licensing by his opponents and competitors in a

private Court. He is a duly licensed attorney for 33 years.

All references hereinafter, unless otherwise indicated, are to sections of the California Business and Professions Code.

Argument

I.

The State Bar Court is Unconstitutional as it seeks to claim to have and to divest the real courts of law of their original subject matter jurisdiction

Amicus suggests the first principle of substantive due process of law guaranteed by the fifth and fourteenth amendments to the United States Constitution is that no court, no judge, no person may act unless they have subject matter jurisdiction.

It has been said that it is essential to the proper rendition

of a judgment that the court have jurisdiction of the subject matter. Fauntleroy v.Lum, 210 US 230, 52 L.Ed. 1039; 28 S. Ct. 641. Subject matter jurisdiction is such an essential element of fundamental due process of law that it is not subject, as the California State Bar claims, to any degree of claim to discretion. Ex Parte Bradley (US) 7 Wall. 364, 19 L. Ed. 214. The rendition of a judgment without jurisdiction is a usurpation of power. The judgment becomes Corum Non Judice, and Ipso Facto void. Philadeplphia W and B. R. Co. v. Trimble (US) 10 Wall. 367, 19 L. Ed. 948, Martin v. Hunter (US) 1 Wheat 304, 4 L.Ed. 97: Valley v. Northern F and M Co., 254 US 348, 65 L.Ed. 297, 41 S. Ct.116.

A. Since the first principle is that a court must be one of competent jurisdiction, and the alleged State Bar Court is not one, it is void

The Courts are defined in Article 6, section 1 of the California Constitution, wherein it is stated that they possess the state's judicial power. The alleged State Bar court is not one of them. Article 6 further goes on to clarify the scope of subject matter jurisdiction of each of the permitted courts. It is clear that an alleged State Bar court has neither original, appellate, or special jurisdiction of any kind in the State of California.

The State Bar Court is not listed as a court nor is it granted any subject matter jurisdiction. The State Bar, instead, is created as a

corporation, and not a " Court." Art. 6, sec. 9, Ca. Consti. It is, thus, clear, that any alleged State Bar Court has no subject matter jurisdiction constitutionally. With no subject matter jurisdiction constitutionally, it is not a court of competent jurisdiction that may be recognized in another state.

B. The state bar's limited role is as an advisory administrative arm of the California Supreme Court, and perhaps now to the Court of Appeals, which are the only courts of competent jurisdiction involved in attorney discipline

The relation between courts and administrative agencies is not the same as the relation between upper and lower courts. Walling v. Benson (CA 8 Mo.) 137 F. 2d. 501, 149 ALR 186, cert. denied 320 US 791, 88 L. Ed.476, 64 S. Ct. 206. The judicial

process supplies the missing element in any administrative process without which there is no due process of law. The judicial process, and not the administrative process, supplies the missing element by having, especially in the field of attorney licensing, the power, the capacity, the legal knowledge and training to apply existing law, construing it, defining it, determining it, then acting with the power of the Sovereign and the legitimate power of the state, to take the liberty and property of attorneys. See 1 Am. Jur. 2d. section 19," Administrative Law."

The legislature's ability to create administrative bodies is limited to its constitutional mandate. That mandate is first

controlled by the People as the legislature may not create entities not for the Public's health or safety or welfare nor may it empower them to act for special interests or private interests. The need for administrative agencies grew out of the complexities of government and a need to have specialized knowledge in experts hearing the initial issues. However, the alleged State Bar court has no specialized knowledge.

The difficulty first arises in that attorneys are not under either the Executive or Legislative' branches of government, but are under the Judicial Branch as " Court Officers." In re: Cate, (1928) 273 P. 617, supplementing opinions 270 P. 968 and 271 P. 356. When the

State Bar first claimed that the legislature had empowered it to license attorneys through the passage of the State Bar Act, the Court was quite clear any such claim to licensing by the legislature or by the legislature delegating attorney licensing to a State Bar association was Ultra Vires and void as " the attorney does not hold office as a public trust, within the Constitution, but is a court officer, exercising a privilege or franchise " granted by the separate Judicial Branch of government, which has exclusive jurisdiction over its own " Court Officers." That decision also made clear there is no dual jurisdiction in both the legislative and judicial branches to license law-

yers. It resides only in the Judiciary.

The State Bar of California was created by the legislature and not by the separate Judicial Branch. Its creation was accomplished through passage of the State Bar Act in 1927. Its powers are expressly defined and delineated in section 6001. It is listed as a public corporation. The statute says the California State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives (a) make contracts, (b) borrow money, contract debts, issue bonds, notes and debentures and secure the payment of or performance of its obligations, c) own, hold, use,

manage and deal in and with real and personal property, d) construct, alter, maintain and repair buildings ... e) Purchase, lease, obtain options upon, acquire by gift, bequest or other devise or otherwise, any real or personal property or any interest therein, f) Sell, lease, exchange, convey, transfer, assign,encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payble by members, g) Do all acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes."

Real courts, of course, can not perform many of these functions, as they are typically proprietary functions of private corporations.

One must also note that there is no statutory power for this corporation to create itself into or have a court.

Since the State Bar is a legislative creation, it may never have any subject matter jurisdiction to discipline or admit lawyers as admission and discipline are judicial functions reserved to the elected judges who sit in the courts created by the People through their Constitution. Art. 3, sec. 3 of the California Constitution mandates that each of the three branches of government are separate and equal. No branch may intrude or infringe

upon the functions and duties of the other branches of government. As stated in Hustedt v. Workers Compensation Appeals Bd.,(1981) 30 Cal.3d. 329,337, 178 Cal. Rptr. 801, 636 P. 2d. 1139, citing In re Lavine (1935) 2 Cal. 2d. 324,328, 41 P. 2d. 161, " An attorney is an officer of the court and whether a person shall be admitted (or disciplined) is a judicial, not a legislative question."

It is the exclusive prerogative, right, and duty of the Judicial branch of government to regulate its own officers. Brotsky v. State Bar (1962) 57 Cal. 2d. 287, Byrondonjack v. State Bar (1929) 208 Cal. 439, 281 P. 1018.

The constitutionality of the State Bar act was premised on

maintenance of the required separation of powers and protection of the due process rights of " Court Officers". Bryondonjack, supra. Thus, the State Bar may recommend a candidate for admission or recommend suspension or disbarment of an attorney to the California Supreme Court, but it may not have its own court to do so or exercise any court-like functions of doing so as it is a creature of statute and not a constitutionally-invested entity with judicial power. In re: Shattuck (1929) 208 Cal. 6, 12, 279 P. 998; Bryondonjack, supra.

As stated in Shattuck, supra, in the area of admission or discipline of attorneys, the " bar's role has consistently been articulated as that of an administra-

tive assistant to or adjunct of this court, which nonetheless retains its inherent judicial authority to disbar or suspend attorneys." That case further clarified that the State Bar Act is unconstitutional to the extent it attempts to usurp those judicial powers and functions for itself, as follows, at p. 12:

> " The only order or orders which are provided for (in the State Bar Act) and which have or were intended to have the effect of working the disbarment, suspension, or discipline of any person ... are the final orders which are to be made by this court under the provisions of said act, ... and any decision which the Board of Bar Governors may be empowered or minded to make... is merely recommendatory in character and has no other or further finality in effecting the disbarment, suspension or discipline of those persons who may be brought before said board..."

As stated in Fish v. State Bar,

(1931), the board of governors of the State Bar, when sitting in a disciplinary proceeding, is acting solely as an administrative arm of the California Supreme Court, and not as a court.

C. The State Bar Court is Unconstitutional as it seeks to divest the State Supreme Court or the Court of Appeals of their exclusive subject matter jurisdiction over attorneys

The State Bar now claims it licenses lawyers through the State Bar court. Sections 6007 (c), 6079, 6079.1, 6086, 6086. 5, 6082, 6084 (a), 6125, 6126 (b). The California Supreme Court's decision in Conway v. State Bar, 255 Cal. Rptr. 390 (Cal.1989), in effect, grants judicial power to the legislature to transfer the judicial functions of licensing to its creature, the

State Bar, by claiming to allow the bar to change active membership status in the bar to inactive membership in its organization.

This violates Art. 6, Sec. 9 of the California Constitution in that such membership is automatic upon the admission to practice law by the California Supreme Court.

The California State Bar Asciation through its alleged State Bar Court now claims it is a judicial body with judicial functions, powers, duties, and an independent adjudicatory authority. Section 6086.5.

To the extent that the Massachusetts judgment was premised on an alleged State Bar Court being a " judicial proceeding " under the meaning of the Full Faith and

Credit clause, the public act that had to be recognized first, the California Constitution, states that all judicial power is in the California Supreme Court, the Courts of Appeal, the Superior Courts, the Municipal Court, and the Justice Courts and has no provision for any other courts being created or allowed.

In fact, constitutionally the State Bar can not regulate, adjudicate, or enforce anything as it may never possess any judicial power as the state's voters have never approved it possessing any judicial power. The People abolished all authority in the Legislature to create any new courts or grant anyone any judicial power 24 years ago, reserving to them-

selves, the People, the sole and exclusive power to create any new courts or allow anyone to possess any judicial power. See Article 6, sections 1 and 9, Article 2, section 8, Article 4, section 1 and 16, Article 6, section 16, Ca. Constitution and Blume, " California Courts in Historical Perspective," 22 Hastings Law Journal 121; see Witkin, California Procedure, Volume 2, " Courts," p.153-171, 182-184, 188, 190, 194, 204.

The only way the State Bar Act was deemed constitutional was if it had no regulatory, no adjudicatory, and no enforcement powers, but served solely in an advisory capacity to the state Supreme Court with all final action in the state Supreme Court. Hogan v. State Bar,

(1951) 228 P. 2d. 554, C. 2d. 807. This principle is at variance with the state bar's claims that they make the orders, subject to later reversal or " oversight."

It was well-stated in former Justice Kaufman's dissent in Conway, supra, as follows, which decision does not address the unconstitutionality under the Due Process Clause of the United States Constitution of the state bar's claim to taking over the subject matter jurisdiction of the licensing court nor does it address the obvious Sherman Anti-Trust Act claims that private opponents and competitors can not license each other (at p. 404):

" The act further provides that upon any decision recommending the disbarment or suspension

from practice of a member, the bar shall immediately file a copy of its decision, together with the transcript and findings, with the clerk of this court. (s. 6081). The member may then, of course, file a petition for review to modify or reverse the decision recommending the disbarment or suspension. (s. 6082, 6083) When no petition for review has been filed, this court " shall make such order as it may deem proper in the circumstances." (s. 6084, italics added). Thus, even when a member fails to seek review, no discipline is imposed except upon order of this court, which retains its inherent authority to reverse or modify the bar's recommendation. See In re Jones, (1971) 5 Cal. 3d. 390, 394, 96 Cal. Rptr. 448, 487 P. 2d. 1016."

The State Bar Court is unconstitutional as it seeks to claim it has changed the state bar's constitutionally limited status from an administrative assistant to a Court to being its own Court replacing the licensing court. As stated in Lathrop v. Donohue, supra, by Jus-

tice Douglas, such a schemata is unconstitutional: " a self-policy provision whereby lawyers were given the power to investigate and disbar their associates would raise, under most if not all state constitutions, the type of problems presented in Schecter Corp. v. U.S. 295 U.S. 495, see 1 Davis, Administrative Law Treatise."

By seeking to claim that a privately-created court now transfers members of the State Bar from active members to inactive, [s. 6007 (c)], that this private court now receives and investigates complaints, makes findings, and makes recommendations to the 23 member board, and that this alleged State Bar Court can then, on its own, act on its own recommendations, (s.

6043), all due process of law is lost as it is merely superseding and supplanting the state supreme court's or the court of appeals' exclusive subject matter jurisdiction.

By claiming this private court may initiate and conduct investigations in all matters relating to or affecting a) the State Bar, or its affairs, the practice of law, the discipline of the members of the State Bar, the acts or practices of a a person whom the alleged State Bar court has reason to believe is engaged in the unauthorized practice of the law, and " any other matter within the jurisdiction of the State Bar," (s. 6044), the statute creates a roving and unlimited prosecutorial, adjudi-

catory, and self-interested private court that has unlimited subject matter jurisdiction and may combine within itself all of the functions of government reserved to the three separate branches. It may legislate, then execute, then adjudicate its own legislation, execution, and implementation.

In claiming that this private court may take and hear evidence pertaining to the proceeding, administer oaths and affirmations, and compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding, (s. 6049), it is attempting to give it judicial power it can not possess under the State Bar Act or Article 6 of the California

Constitution. In claiming this private court may admit the testimony of a witness given in a contested civil action or special proceeding to which the person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, the State Bar purports to establish new and special and different rules of evidence for its private court which deviate from and are in violation of the Evidence rules applicable to all real courts of law. (s. 6049.2 and 6002)

When the State Bar purports to claim its private court may declare someone is in contempt of its alleged court if they refuse to appear and give testimony or to produce the books, papers or docu-

ments subpoeaned if they are " pertinent or proper," it seeks to establish rules of appearance and of production in violation of the Code of Civil Procedure, which is applicable to all other courts of real law. (s. 6050).

In purporting to claim that the alleged State Bar court may apply to the superior court for a contempt claiming that the proceeding is, " In the matter of.., Alleged Contemnor re: State Bar Court, No." it seeks to claim that a real court of law should and must treat it not as an administrative agency, but as an alleged court, thereby changing the standard of review and the burden of proof. (s.6051).

In claiming it can issue subpoenas, conduct depositions under

its rules of procedure, which are contrary to the rules of discovery applicable to other courts of law, it seeks to claim it can have a special, private court with no regularity of process or procedure. (s. 6052).

In claiming that the alleged State Bar court may discipline members by " inactivity, " and now suspensions or disbarments, it seeks to give itself finality as a judicial entity, and change any standard of review of its acts from the required De Novo review to the standard of review of lower courts by higher courts, to wit, " errors of law, the substantial evidence rule, and abuse of discretion. " (s. 6077) This then abolishes Article Article 3, section 3.5 of

the California Constitution, which prohibits the State Bar deciding any law issues.

Section 6082, as incorporated with section 6086.5, which provides that any person complained against may have the action of the alleged State Bar Court reviewed by the California Supreme Court or by a Court of Appeals, changes the standard of review from the required De Novo independent review and the required standard of convincing proof and to a reasonable certainty as to facts, with all reasonable doubts resolved in favor of the accused attorney to an error of law, substantial evidence, and abuse of discretion standard, which standard is only applicable to real courts with real judges of real

law. Kitsis v. State Bar, (1979) 153 Cal. Rptr. 836, 592 P. 2d. 323, 23 C.3d.857, Spindell v. State Bar, (1975) 118 Cal. Rptr. 480, 530 P. 2d. 168, 13 C. 3d. 253; Lee v. State Bar of Cal. (1970) 88 Cal. Rptr. 361, 472 P. 2d. 449, 2 C. 3d. 927.

The ultimate unconstitutionality is that the California Supreme Court has now passed rules asserting it shall allow the alleged State Bar Court to suspend or disbar some attorneys, while refusing for two years to hear the Petitions asserting this violates both our State and United States Constitutions. Section 6084 (a). This denies to some attorneys their rights to a constitutional De Novo and independent review of both the

alleged facts and the law and constitutional issues, and the right to the entry of an order by their own admitting and licensing court.

D. The State Bar Court is Unconstitutional as it claims to supplant the original subject matter jurisdiction over civil lawsuits reserved to the real courts of law

The charges in the Lebbos' case indicate the alleged State Bar Court is trying to try cases that are pending in real courts of law with real judges. As held in Lady v. Worthington (1944) 143 P. 2d. 1000, 61 C.A. 2d. 780, the State Bar may not review decisions or judgments of the supreme or other courts. The following, as the court files indicate, are matters that were or are pending in real courts of law, over which the alleged

State Bar court could exert no claim to any subject matter jurisdiction:

> Count two-2- On or about June 12, 1987, in the family law case of In re Rhedrick, you filed with the court an alleged copy of a court order, when in fact no such order had been signed by the Judge.

An examination of the pending Nullity action in the marriage of Rhedrick, case no. 629057 indicates that Lebbos' opposing counsel, Brad Baugh, in that case made that accusation, and the Commissioner dismissed it as a mix-up, on June 22, 1987. Exhibit 13: 3-4. The alleged State Bar Court claims it has jurisdiction to overturn the real court of law later.

> 3 (2)-On or about December 21, 1984,in the case of Lebbos v. Wooten, judgment was rendered against you in the amount of $ 51,000. On or about June 6, 1986, in accord with an Order of

Examination, your deposition was taken in an effort to determine your income and assets. At that deposition, you concealed assets from the judgment creditor.

As an inspection of Lebbos v. Wooten reveals, case no. 521953, if perjury or concealment of assets were involved in the order of examination, the opposing counsel's remedy in 1986 was to file a contempt charge or a perjury charge, which they never did. The alleged State Bar Court is not empowered to be a substitute for the duties and obligations of opposing counsel in pending litigation. It can not use coerced cash to represent private litigants in pending suits.

4 (2)-In or about February,1987, you sought to disqualify Judge James Stewart from the Sandhir case. In doing so, you made false statements in your moving papers and in court in support of your effort.

The issue of the disqualification for cause of Judge Stewart in case no. 528229, and the client's claims to his facts are a matter solely within the determination of solely the constitutional court of law, and the alleged State Bar Court may not substitute its judgment for the real Courts of Law or litigate those matters for one of the judges.

4 (3)-In or about March, 1987, you received a stipulation in Sandhir prepared by opposing counsel and signed by opposing counsel and her client. You altered the stipulation in Sandhir without the consent of opposing counsel. You submitted it to the court without informing the court that the allegations were made without the consent of opposing counsel.

This was the accusation of the terminated opposing counsel in the Marriage of Sandhir, Santa Clara Superior Court, case no. 528229.

The validity of the terminated attorney's accusation was pending appeal before a real court of law. Sandhir v. Sandhir, Sixth Appellate District Court of Appeals, docket no. H003799. Thus, the State Bar court could not constitutionally try to determine the merits of that appeal, which is what it did, interfering with it and destroying the jurisdiction of the court of appeal.

6 (1)- Since in or about 1986, you have repeatedly made offensive statements about judges, opposing counsel, and other persons connected with cases that you were involved in. The offensive behavior was not required by the justice of the particular case.

Count six, founded on an " Offensive Personality statute, " section 6068 (f), is obviously a veiled attempt to try the merits of

pending Federal and state suits by claiming those merits are " Offensive " :

6 (2)(A)- On or about September 14, 1986, you stated that Santa Clara County Superior Court is dirty and fails to follow lawful procedures.

This appears to be an attempt for the alleged State Bar Court to try the merits of the pending Federal Civil Rights litigation concerning the embezzlements the Superior Court judges caused to Lebbos in Lebbos v. Judges, Santa Clara Superior Court, 883 F. 2d. 810 (Ninth) (1989).

6 (2)(B)- On or about September 19, 1986, you filed a declaration in Lebbos vs. Wooten which contained repeated offensive attacks on judges in Santa Clara County.

This appears to have been an attempt to try the merits of Lebbos v. Judges, Santa Clara Superior

Court, supra, pending in the Ninth Circuit.

6 (2)(C)- On or about December 22, 1986, in the Bankruptcy of Betsey Lebbos, you accused Judge Rushing of making an illegal order; And accused Ms. Wooten and attorney Jeralyn Spradlin of stealing your mail.

This is the exact merits of Lebbos v. Judges, supra.

6 (3)(A)- On or about February 17, 1987, you stated that Judge James Stewart is incapable of understanding his oath of office, that he is reckless, that he is deliberately destroying a child's life, and that he is racially biased.

It is clear that those statements were not those of Attorney Lebbos. They were similar statements of her client in his verified disqualification request, Exhibit MM, pending a final determination in a real court of law.

6 (3)(B)- On or about April 4, 1987, you stated that Judge Stewart meddles beyond public decency, that

he is bigoted, and that court attache Baron is a flunky.

This appears to be a near identical problem to that presented above.

6 (G) (a)- On or about October 19, 1987, in In Re Kemp, You referred to Judge Thomas Black's pending criminal prosecution although it had no relevance to the matter before the Court; b) You also made other charges against Judge Black without any factual basis to support them.

The reference to October 19, 1987 is obviously to the client's Petition for Judge Kemp's disqualification for cause submitted for a proper determination to the real Court of law. Ex.55. Relevance and materiality is a matter for a real court of law, not a disciplinary agency with no subject matter jurisdiction to decide those issues. To like effect is the allegation of

falsity, as it is within the Court of Appeals' jurisdiction to determine falsity. Judicial Notice of Kemp vs. Santa Cruz Superior Court vs.Kemp, Santa Cruz # 93355, Ct. of Appeals # H003674, and Cal. Supreme Ct. # S002975, reflects that these matters were properly dealt with by the real courts of law.

6 (3)(H)- On or about November 25, 1987, you were held in contempt for your behavior in the Webber matter.

As Exhibit KKKK indicates, the alleged contempt was sufficiently in dispute that 3 out of the 7 Justices of the state Supreme Court voted to stay it. With the real court of law sufficiently in dispute, the State Bar court was and is without jurisidiction to substitute its judgment for the real court of law.

7 (1)- Since in ..1986, you have made false statements about judges, attorneys, and other persons. Said statements were made with no factual basis to support them.

Count seven was an attempt to try the merits of pending cases by claiming a position taken in litigation was " false," when denying to the attorney her right to present her facts and her law to the real court of law before whom the issues were really pending.

7 (2) (A)- In Lebbos vs. Wooten, at your deposition taken on or about June 6, 1986, you testified that you had so few client files that they fit in your desk. On September 19, 1987, you filed a declaration claiming to have approximately 1,000 client files at the same location.

If the statement in the deposition was false, then the opposing counsel had their remedy by way of contempt or perjury, but they never sought their remedy.

7 (2)(B)- On or about December 22, 1986, in the Bankruptcy of Betsey Lebbos, you claimed that a Court Order affecting your assets was illegal.

That is the exact issue pending in Lebbos v. Judges, supra.

7 (3)(A)- In or about April, 1987 you accused Judge Rushing of trying to bankrupt you out of spite.

Those are issues now pending in Lebbos v. Judges, supra.

7 (3)(B)- On or about October 19, 1987 you accused Judge Black of awarding custody of the children in the Kemp matter without notice to the other party.

The brief shows no such accusation was ever made. Ex.55: 52:4-16.

7 (3)(C)- On or about November 23, 1987, you falsely represented to the Court of Appeal that the State Bar had decided not to bring charges against you based on Judge Fogel's Complaint.

Judicial Notice of the charges shows they were not filed on November 23,1987. They were not filed

until March 7, 1988.

8 (1)- From and since early 1987, you have sought to disqualify all Santa Clara County Judges from hearing cases in which you are an attorney. Your initial motion to disqualify the judges was denied on or about April 30, 1987. Since then you have repeatedly filed the same or similar motions in subsequent proceedings, although there were no new facts to justify them.

The validity of a disqualification for cause is not within the jurisdiction of the State Bar. It is within the jurisdiction of the real courts of law under C.C.P. section 170.1 et. seq.

8 (2)- After you lost various rulings in Lebbos vs. Wooten, you filed Lebbos vs. Judges of the Superior Court (United States District Court, N.D., CA, # C 86 0704 SW), which lawsuit was not just, and which lawsuit was commenced with the corrupt motive of passion and/ or interest.

The State Bar claims it decides merit to lawsuits, and not the real courts of law. The Ninth Circuit

disagrees with the alleged state bar's courts claims to unjustness of this lawsuit and has allowed the attorney to proceed to trial in Federal Court for deprivation of her constitutional rights to practice law and for constitutional torts inflicted upon her by action of the state court and the state bar's complaining witnesses, Miller, Grilli, and Spradlin, in unlawfully changing her address, stealing her, her clients', and her family's mail, assets and property. Lebbos v. Judges, supra, at p.818.

The State Bar is not authorized to try pending suits, yet it appears in the Lebbos case, that was their sole and non-jurisdictional intent. People v. Wheeler, (1952) 249 P. 2d. 299, 113 C.A. 2d.

881; Kohr v. Kohr (1963) 31 Cal. Rptr. 85, 216 C.A. 2d. 516; Clark v. State Bar 246 P. 2d. 1, 39 C. 2d. 161 (1956); Gallagher v. Municipal Court of the City of Los Angeles, (1948) 192 P.2d. 905, 31 C. 2d.784; Platnauer v. Superior Court in and for Sacramento County (1917) 163 P. 237, 32 C.A. 463; Sullivan v. State Bar (1946) 170 P. 2d.888, 28 C.2d. 488.

The proper scope of the state bar's jurisdiction is that it can not entertain disciplinary proceedings until the truth of a matter then pending is determined by a competent court of law. In re: Lowenthal, (Sup. 1894) 37 P. 526; Wyatt v. Stephens (1894) 36 P. 586.

II.

Conclusion

As stated in Nesblett v.State Bar of California, 109 P. 2d. 340, 17 C. 2d. 77 (1941), the right to practice law is a valuable one which should not be taken away under circumstances that have even the slightest tendency to suggest any unfairness or disadvantage therein to the attorney whose right to remain in his profession is challenged.

It is unfair and a disadvantage for an administrative arm of the court to suddenly claim to elevate itself into an alleged court. It is unfair and a disadvantage to purport to force an attorney to present their cases in two different tribunals at once, and then have a non-jurisdictional tribunal, such as the State Bar Court, act-

ing solely for the opposing attorney, prevent the real court of law exercising its subject matter jurisdiction by claiming to prevent the attorney from appearing by claiming to enroll her involuntarily as an inactive member of the State Bar, especially when that is done, ex parte, at the request of her opponents in the real suit in the real court of law. This use of an alleged State Bar court for opponents underscores the need to have it declared a Nullity, as no constitutional court of law can represent private opponents and competitors.

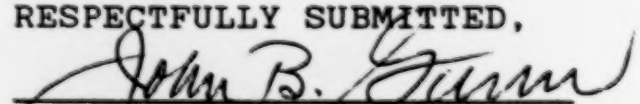
For the foregoing, Amicus requests that this Court hear the Petition and establish the State Bar Court is unconstitutional as

a violation of fundamental substantive due process of law as it has no subject matter jurisdiction.

Amicus requests that the Massachusetts judgment be reversed and voided as the Lebbos' proceedings were a Nullity for lack of subject matter jurisdiction.

A principle as old as the law itself is that any act of a court without jurisdiction is void and a Nullity. Concord Casualty and S. Co. v. United States, (C.C.A.) 69 F. 2d.78, 91 A.L.R. 885.

RESPECTFULLY SUBMITTED,



JOHN B. GUNN, ESQ.
JOHN B. GUNN LAW CORPORATION
~~111~~ N. Market Street
San Jose, Ca. 95113

408-298-5888

Amicus Curiae
For Petitioner

MOTION FILED
NOV 20 1990

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

RONALD Z. BERKI, ESQ.
960 West Taylor Street
San Jose, Ca. 95126

408-971-1160

60

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

MOTION FOR LEAVE TO FILE AMICUS CURIAE IN SUPPORT Of PETITIONER AND THIS COURT GRANTING HER PETITION

Now comes RONALD Z. BERKI, ESQ., and moves for leave to file the attached brief as Amicus Curiae in support of Petitioner and this Court hearing her Petition.

This motion is being filed as the opposing party, Supreme Judicial

Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus wishes to bring to the Court's attention relevant matter which has not already been brought to its attention and which has not been raised by the parties. That relevant information concerns the need for a declaration of unconstitutionality of the State Bar Court of the California State Bar Asociation due to its failure to have any ingredients of a Court and the lack of due process inherent in a system where the judges and the prosecutors are co-employees paid by the same private funds and employed by the same 23

private citizens.

Amicus wishes to have this Court consider the need to void the alleged State Bar Court of the State Bar of California under the reasoning of McClure v. Harris, 503 F. Supp. 409, 450, May 19, 1980 (Northern District Court of California) as described herein.

It is important for California attorneys to know who licenses them and how and what is not proper rather than being in a state of fear, uncertainty, and conflicting demands from different branches of government and different persons. Our compelled cash being used for legislative encroachment and abrogation of our duties within the judicial branch is without our authorization and consent. We did not

vote to abridge our California and United States Constitutions by asserting our own trade group could have a Court nor did we, the compelled members, vote to allow the 23 private persons on our board to claim to create a Court and abort our Constitutional form of government.

For the foregoing, Amicus respectfully requests the attached brief be considered in aid of this Court's determination to hear the Petition and void the judgment and aid us in our serious Constitutional crisis.

RESPECTFULLY SUBMITTED,

Ronald Z. Berki

RONALD Z. BERKI, ESQ.
960 West Taylor Street
San Jose, Ca. 95126

408-971-1160

Amicus Curiae Applicant

QUESTION PRESENTED

1. Does the Due Process of law clause prohibit a state creating a court that is not empowered to decide any law and has no ingredients of a Court ?

2. Does the equal protection of the law clause invalidate an alleged State Bar Court licensing California attorneys when it is not a court ?

3. Does Due Process of law permit a state to have attorneys licensed by private judges and prosecutors who are co-employees of the same private membership trade group ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

BETSEY WARREN LEBBOS, ESQ.
P.O. Box 40
New Almaden, Ca. 95042-0040

Petitioner Attorney

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Bar Counsel

TABLE OF AUTHORITIES

Brandenburg v.Ohio, 395 U.S. 444, 89 S. Ct. 1827, 34 L.Ed. 2d 430	45
Brotsky v. state bar, (1962), 157 Cal. 2d. 287, 300-301	4
Byronjack v. state bar (1929) 208 Cal.2d 287	4
Chronicle Publishing Co. v. Superior Court in and for the City of San Francisco (1960) 7 Cal. Rptr. 109, 354 P. 2d. 637, 54 C. 2d. 548	4,13
Conway v. State bar, 47 Cal. 3d.1107, 255 Cal. Rptr. 390, 767 P. 2d.657 (1989)	14
Ex Parte Steinman, 95 Pa. 220	23
Gibson v.Berryhill, 411 U.S. 564 (1973)	3,15
Gipson v. Supreme Court of New Jersey, C.C.N.J., 416 F. Supp. 1129, affirmed C.A.	5
Gipson v. New Jersey Supreme 2,7 Court, 558 F.2d.701.	6
Hinds v. state bar (1941) 119 P. 2d. 134, 19 C.87;	5

In re Anderson, 272 Md. 85, 321 A.2d. 516 (1974) cert. denied 421 U.S. 1000, 95 S. Ct. 1399, 44 L. Ed. 2d. 667 (1975) 10

In Re: Justices of the Appellate Division, 33 N.Y. S. 2d. 441 (1973) 22

In Re: Sawyer, 360 US 622, 3 L. Ed. 2d. 1473, 79 S. Ct. 1376 22

In re: Snyder, 472 U.S. 634, 105 S.Ct. 2874, 86 L. Ed. 2d. 504 (1985) 21

Lebbos v. Judges, Santa Clara Superior Court, 883 F. 2d. 810 (Ninth) (1989) 19,43

McClure vs. Harris, 503 F. Sup. 409, 450, May 19, 1980 (Northern District Court of California) 3,27,29 36-38

Near v. Minnesota, 283 U.S. 697, 51 S. Ct. 6252 45

Norton v. Shelby County 118 U.S. 425 10,11

People v. the Illinois Courts Commission, 69 Ill. 2d.445, 14 Ill. Dec. 248 (1978) 16

Polk v.state bar of Texas 374 F. Supp. 784 (N.D. Tex.1974) 21,23

Re Austin, 5 Rawle (Pa) 191 14,23

Re Pryor, 18 Kan 72. 23

Sheppard v. Maxwell, 384 US 333, 16 L.Ed. 2d 600, 86 S. Ct. 1507, 6 Ohio Misc. 231, 35 Ohio Ops 2d 431 22

Skinner v. Oklahoma, 317 U.S. 535, 540, 62 S. Ct.1110 (1942) 40

State Board of Dentistry v. Blumer, 261 N.W. 2d. 186 (1978) 43

Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed. 2d. 1311 15

United States Constitution :

Fifth Amendment 34

Fourteenth Amendment 34

Ca. Constitution :

Article 2, Section 1 8

Article 2, section 8 34

Article 3, section 3 12

Article 3, section 3.5 7,12

Article 4, section 16 (B) 34,36

Article 6, section 1 7,12,14,34

Article 6, section 9 7-9,12,16 34,40

Ca. Business and Professions Code

sections:

Section 6000 18,26

Section 6001 18,26

Section 6002 27

Section 6010-6015 27

Section 6028 35

Section 6031 18

Section 6041.1 34

Section 6068 41

Section 6077 6

Section 6078 6

Section 6079 13,37

Section 6079.1 13,35

Section 6084 13

Section 6086.5 10,27,33
13,41

Section 6125 13

Section 6126(b) 13

State Bar Rules of Procedure:

Rule 100 41

Rule 111 3,9,27

Rule 113 (d) 36

Rule 508 28

Rule 509 28

Rule 510 28

Rule 511 28

Articles:

Black, Robert C.," Attorney Discipline" 44

Table of Contents

Page

Questions Presented.....1

List of Parties..... ii

Table of Authorities.....iii

The Interest of Amicus 1

Summary of Argument 3

Argument..... 4

I. Introduction..... 4

II. The State Bar Court is unconstitutional as it has no judges 8

III. The State Bar Court is unconstitutional as it is not empowered to find facts or interpret the law 12

IV. The State Bar Court is unconstitutional as the prosecutors and the judges are appointed without election or public accountability by the same 23 private persons and serve the same political ends 24

V. The State Bar Court is unconstitutional as it has exempted itself from all State law 39

VI. The State Bar Court is unconstitutional as it has no subject matter jurisdiction 41

Conclusion.....44

Verification.....46

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN
SUPPORT OF PETITIONER

The Interest of Amicus

Applicant Attorney respectfully requests permission to file the enclosed Amicus Curiae brief in support of Petitioner. His interest in this court granting this Petition is so as to resolve present concerns of himself and

other California lawyers concerning who licenses them presently. Their contracts of licensing were with the California Supreme Court. Attorneys have always been licensed since they were first created in 1292 in England in their state's highest court. This ensured uniformity, codes of ethics established only by their admitting court, judicial competence, rules of evidence and procedure applied, and due process rights for attorneys. It served to not politicize attorneys so they could faithfully discharge their duties to their clients and the Public.

Now a defective system has been created which is constitutionally infirm where Applicant faces being

licensed by his own opponent and competitor. When the judges and the referees of the alleged State Bar Court and the state bar prosecutors are co-employees of a private membership trade group and interested in their mutual principal's private welfare and ability to pay their salaries with private funds and fines they themselves impose, the scales of justice appear tipped against fair and impartial and competent treatment of California attorneys. Private concerns predominate and not public duty.

Summary of Argument

Amicus believes the decisions of Gibson v.Berryhill, 411 U.S. 564 (1973) and McClure vs. Harris, 503 F. Sup. 409, 450, May 19, 1980

(Northern District Court of California) are dispositive of the unconstitutionality of the statutes creating a State Bar Court and the unconstitutionality of the Involuntary Inactive Enrollment statute.

Argument in Support of the Petition

I.

INTRODUCTION

As a practical matter, the state bar court is unconstitutional as it has no ingredients of a court.

Black's Law Dictionary defines " Court," as " an organ of government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice... an incorporeal political body being

composed of one or more judges."

The state bar association is not an organ of government. It is a private membership group of private attorneys. Ca. Business and Professions Code section 6001. It is an administrative arm to the state supreme court and not an independent, co-equal judicial entity. Article 6, section 1, Ca. Constitution; Chronicle Publishing Co. v. Superior Court in and for the City of San Francisco (1960) 7 Cal. Rptr. 109, 354 P. 2d. 637, 54 C. 2d. 548; Brotsky v. state bar, (1962), 157 Cal. 2d. 287, 300-301, Byronjack v. state bar (1929) 208 Cal.2d 287, Hinds v. state bar (1941) 119 P. 2d. 134, 19 C.87; Gipson v. Supreme Court of New

Jersey, C.C.N.J., 416 F. Supp. 1129, affirmed C.A., Gipson v. New Jersey Supreme Court, 558 F.2d.701.

As held in In re: Gibson, 35 N.M. 550, if a statute purports to allow a state bar association to create an inferior tribunal, it is unconstitutional.

The state bar's role is solely to take evidence for the state supreme court. Ca. Business and Professions Code sections 6077 and 6078. Its only records are minutes, hearing transcripts and advisory recommendations for the Supreme Court, Ca. Business and Professions Code section 6080.

Whereas " courts " must have records, the alleged state bar court has none.

The California Constitution lists the only courts of record allowed. Art.6, sec.1. The State Bar Court is void as it can have no records.

Since a " Court's " function is the application of the laws to controversies brought before it and the public administration of justice..," Blacks's Law Dictionary, supra, but the state bar court is prohibited constitutionally from applying any law to any facts or finding any facts or law, it can not be a court. Article 6, section 1 and 9, article 3, section 3 and 3.5, Ca. Constitution.

Since the definition of a court requires that it " be an incorporeal political body being composed of one or more judges," Black's Law

Dictionary, supra, but the state bar court has no judges and may never have any judges as judges may only sit in courts created by the people and all judges of the courts must be elected by the People, it does not have the basic ingredient of a " Court " - judges. see article 6, sections 1 and 16, article 2, section 1, and Ca. Business and Professions Code section 6079.1.

II.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT HAS NO JUDGES

State bar rule of procedure rule 100, in effect when the Lebbos matter was filed in 1988, indicates that those who sit on this alleged " court " are non-lawyer or lawyer volunteers who claim to be " referees ", not judges. Judges of all

courts in California are appointed by the elected Governor, and then subject to the public vote. Article 6, section 16, Ca. Constitution. The State Bar Court's referees are chosen by the 23 member private board of the State Bar Association, except two non-lawyers chosen by the Governor. None are elected by the People of the state. section 6086.5, Rules of procedure 100.

Said State bar rule of procedure rule 100 provided as follows :

INTERNAL RULES OF THE STATE BAR

Rules of Procedure of the State Bar
Division II
The State Bar Court
Rule 100 State Bar Court

The State Bar Court consists of members of the State Bar and non-lawyers appointed by the Board of Governors, and two non-lawyers appointed by the Governor. The foregoing shall be

officers of the State Bar Court and shall be known as referees. From time to time, the Board of Governors may make additional appointments and may leave unfilled vacancies in such additional membership. The term of office of those persons appointed by the Board of Governors shall be terms as prescribed by the Board of Governors. "

It is difficult to conceive that another state would recognize such referees as if they were judges and assert recognition to their interim acts as if they were a real judge of a real court of law. see Norton v. Shelby County 118 U.S.425 (an unconstitutional court is void for all purposes; it has no judges, personnel, charges, records)

A referee is not a judge and may never claim to be one or have judicial title, function, or power. In re Anderson, 272 Md. 85, 321 A.

2d. 516 (1974) cert. denied, 421 U.S. 1000, 95 S. Ct. 1399, 44 L. Ed. 2d. 667 (1975). They are not chosen by the public selection process. Ca. Business and Professions Code section 6086.5 creating an alleged state bar court and Rule of Procedure of the state bar rule 100 et. seq. are void as there were no judges to this court, only unelected volunteers. Norton v. Shelby County 118 U.S. 425.

This result is not altered by the passage of Ca. Business and Professions Code section 6079.1 providing for the appointment of hearing judges to the alleged state bar court by the state supreme court in 1989. Both the state and United States Constitutions prohibit judges from appointing judges.

Appointing judges is ultra vires the judicial role of interpreting the law, Article 6, section 1, Ca. Constitution, fifth and fourteenth amendment to the United States Constitution.

III.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT IS NOT EMPOWERED TO FIND FACTS OR INTERPRET THE LAW

Since a " Court ", by definition, must be an entity that can " apply the laws to controversies brought before it, " Black's Law Dictionary," supra, but the state bar and its court are expressly prohibited from deciding or applying any law, Article 3, section 3.5 and article 6, section 9, Ca. Constitution, the state bar court is unconstitutional under both the state

and United States Constitutions as due process of law is violated by having an administrative board claim it can decide facts or law when it can not be empowered to find facts or interpret the law. Article 6, section 1, Ca. Constitution; Chronicle Publishing Co. v. v. Superior Court in and for the City of San Francisco (1960) 7 Cal. Rptr. 109, 354 P. 2d. 637.

Since Ca. Business and Professions Code sections 6079, 6079.1, 6086.5,6007,6884, 6125, 6126 (b) purport to allow 23 private persons to create an alleged state bar court to hear and determine the facts and the law of inactivity or disciplinary proceedings and take businesses, careers, and liberties

of lawyers, as authorized in Conway v. State bar, 47 Cal. 3d. 1107, 255 Cal. Rptr. 390, 767 P. 2d. 657 (1989), this violates Article 3, section 3 of the Ca. Constitution and the due process of law clause of the fifth and fourteenth amendments to the United States Constition by the legislature purporting to invade the " application of the laws " function that is reserved under article 6, section 1, of the Ca. Constitution to the listed courts.

This transfers the Judicial power to hear and decide cases from article 6, section 1 of the Ca. Constitution to the legislature who transfers it to private, unelected opponents and competitors of lawyers.

Such a system is unconstitutional

as it denies to the attorney and all clients and members of the Public their ability to have their constitutional claims and bars heard by a competent court of law prior to any taking of the right to work and a vested license. see Gibson v. Berryhill, 411 U.S. 564 (1973).

The state bar court must be declared unconstitutional as it purports to decide law, when no one in this alleged " court" is empowered to decide any law. Article 3, section 3, Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed. 2d. 1311 (the invalidity is based not on a violation of the separation of powers, but on how that abolition of separation of powers denies a citizen the Due Process of Law).

This case is similar to People v. the Illinois Courts Commission, 69 Ill.2d.445, 14 Ill.Dec. 248 (1978).

In that case the state constitution was amended to create a Commission with the power to suspend judges. As appears to be true in the Lebbos' case, (1) the entity misconstrued and misapplied the known law with their own erroneous interpretation of the law. The entity countered by claiming the state constitution authorized them to enter the orders and provided for no judicial review for the judge. The Court held that,inasmuch

---

(1) I am informed and believe that the charges indicate that in count one the alleged state bar court believes the conmingling prohibition applies to non-clients' funds, an error of law. In count two, the alleged state bar court believes (continued next page)

as the Commission was not part of the court system, it possessed no power to interpret statutory law or ambiguities or to compel judges to conform their conduct to the Commission's interpretation.

---

(1) (continued from prior page)

that a filing of an order not made is done with no filing or court stamp of filing the paper, when it is a draft wedged into exhibits attached to exhibits in a brief, which is not a filing, another error of law. I am informed that count three concerning concealing assets at a deposition is based on the oral hearsay of an attorney embezzler now in state prison, who stole Lebbos' mail three months after the deposition. Count four is based on the misconstruction that an unapproved offer of settlement is a " stipulation." It is premised on an attorney being responsible if a clerk stamps a judge's signature for a client who wants to see the judge, when the attorney is nowhere around. I am informed that count four concerning false statements is an attempt to quash the speech, not of the attorney, but of a client.
(continued next page)

The court stated the following, at p.59:

" This court derives our authority and jurisdiction from sections 1 and 4 of the judicial article (Ill. Const. 1970, art. VI,sec. 1,4) Section 1 of article VI provides that all of the judicial power in this State is vested in a supreme, appellate and circuit court. Section 4 of article VI provides, inter alia that this court may exercise original judicial jurisdiction.

It is the function and duty of this court to act as the final arbiter of the Constitution."

The Commission took the same position as the alleged State Bar Court takes. It claimed that it can determine " conduct prejudicial to

---

(1) (continued from prior page)

Count five concerns an attorney going to her assigned courtroom as required and the privilege of the public to attend all public proceedings in a courtroom. Count six is founded on an offensive personality statute as is count seven. Said statute is unconstitutional as it seeks to regulate First amend-
(continued next page)

the administration of justice," or " conduct that brings the judicial office into disrepute," even when the disciplinary rules are not in fact violated, or the interpretation of those rules is unconstitutional for invading First Amendment freedoms.

Amicus has taken judicial notice that the charges in the Lebbos' case, and the state bar court's position is that they can disbar based on their personal and subjec-

---

(1) (continued from prior page)

ment activity. Count eight is founded on the same attempt to quash first amendment freedoms by claiming to prevent clients and an attorney from disqualifying judges for cause. Count nine is also found ed on the oral hearsay claims of an embezzler while the client testified that her attorney had her implied consent to file in Federal Court with her listed as a Plaintiff with others in Lebbos v. Judges, Santa Clara Superior Court, 883 F.2d.810 (1989).

tive interpretation of what protected speech, lawsuits, clients being represented hampers their idea of " the administration of justice," RB:3, when no one voted to allow the trade group to decide which clients could sue for what. They act in excess of their limited jurisdiction when they prosecute not for known acts of professional misconduct, but privileged acts and speech. Their subjective, political ideas of who can file suits, who is entitled to say what, where, when and how, who is entitled to be represented, and what privileged acts and speech are permitted by attorneys not only is unconstitutional under the first amendment, but is in excess of any subject matter jurisdiction they might

possess. 40 of the 45 charges clearly involved an invasion of Lebbos' Freedom of Speech or that of her clients. (2)

(2) In re: Snyder, 472 U.S.634, 105 S. Ct. 2874, 86 L. Ed. 2d. 504 (1985), held an attorney criticizing the administration of Justice in a court, does not warrant discipline. The Court did not reach the First Amendment issue, as they merely held that such criticism is " not inimical to the administration of justice." Pursuant to In re Justices of the Appellate Division, 33 N.Y.S. 2d. 441 (1973), an attorney is not subject to discipline for an out-of-court statement. Outside the courtroom the lawyer, may, as any other citizen, freely engage in the marketplace of ideas and say all sorts of things, including things that are disagreeable and obnoxious. Polk v.state bar of Texas 374 F. Supp. 784 (N.D. Tex.1974) (a reprimand for statements made by an attorney outside his professional capacity would violate his first amendment freedoms). Any rationale for any limitation on speech must be tailored to a compelling interest in the prevention of an impairment to the administration of Justice, and not because the speech is offensive, or wrong, or even tortious, (continued on next page)

The state bar court must be declared unconstitutional as it

(2) (continued from prior page)

or spiteful, or malicious, or vindictive. The nature, tone, content of the speech can not be judged, solely whether it impedes the actual administration of justice. Thus, In Re: Sawyer, 360 US 622, 3 L.Ed.2d. 1473, 79 S.Ct. 1376, remarks made to the press during a trial may tend to obstruct the administration of justice, whereas remarks made afterwards would not. Thus, it is only obstructive speech in pleadings or in court while in session or statements to the press in pending cases that may obstruct the administration of justice, as it may impair the ability of the judge or jury to assess and weigh, with detached neutrality, and based solely on the evidence presented in court, the merits of the matter. Sheppard v. Maxwell, 384 US 333, 16 L.Ed.2d 600, 86 S Ct.1507. There is no basis to assert any disciplinary offense when the statements or actions relate to past decisions, as there is no possible obstruction of justice once the case is completed. Re Pryor, 18 Kan 72. When an attorney directs a letter to a judge, stating the court has lost the confidence of the public, and suggesting the resignation of the judge, the attorney may not be

(continued to next page)

does not comprehend either its own constitutional limitations or the

---

(2) (continued from prior page)

disciplined. Re Austin, 5 Rawie (Pa) 191. An attorney in the course of legal proceedings may properly impute prejudice to a judge or court under circumstances that create a privilege. Re Sherwood, 259 Pa. 254, 103 A 42. In that case, an attorney who has removed a cause from a state to a federal court on the ground of local prejudice is privileged in stating to the federal court that the state judges are so prejudiced that his client cannot get a fair trial in the state courts. Criticism, not written or spoken in the capacity of an attorney, is not a ground for disciplinary action. Ex Parte Steinnman, 95 Pa. 220. In Polk v. State bar of Texas (ND Tex) 374 F. Supp 784, it was held that a reprimand for statements to the news media critical of actions of judge and district attorney would violate the attorney's First Amendment rights where such statements were made in response to the manner in which the attorney was treated as a citizen, and where the state bar had not shown that the attorney's conduct was probative of any inability to represent clients or that remarks would interfere with processes of administration of Justice.

limitations of the United States or state constitution on it never deciding any law or facts.

IV.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS THE PROSECUTORS AND THE JUDGES ARE APPOINTED WITHOUT ELECTION OR PUBLIC ACCOUNTABILITY BY THE SAME 23 PRIVATE PERSONS AND SERVE THE SAME POLITICAL ENDS

The state bar examiner is chosen to serve at the pleasure of the Chief Trial Counsel of the state bar. He performs such duties as the chief trial counsel shall direct. State Bar Rule of Procedure, rule 210.

Unlike a proper prosecutor, the prosecutor has no civil service rights. He is subject to the will of the Chief Trial Counsel, who is not elected by the People of the state. He is appointed by the same

23 person board that has created an alleged state bar court. Thus, since the same 23 persons choose both the prosecutors and the " judges," or " referees," there is no division of interest, no independence of the two separate functions, no required neutrality, or detachment, but a fusion of the prosecutorial and adjudicatory interests which establish this state bar court is unconstitutional as the judges and prosecutors, are, in fact, co-employees of the same 23 private persons and receive the same paycheck.

The Chief Trial Counsel is not subject to any public election and no public oversight. He can take bribes and make up charges at his own will. No one can disbar him and

no one can monitor his possible corruption. He is hired by the Board of the state bar association and serves at its unrestrained pleasure. This 23 member Board is not democratically elected. It does not represent the Public as the public is never permitted to remove these persons or vote on them, unlike state agencies where the people can remove the Governor if they do not like or approve of his appointments to boards or agencies, or where the People can remove the Attorney General or any District Attorney if they do not like their appointments either.

Here the 23 member board purports to create not only the judiciary at their own pleasure but also the prosecutor who presents

the cases. Ca. Business and Professions Code section 6010-6015, 6086.5, 6002, and state bar rules of procedure rule 100, et. seq.

Such a self-serving, self-interested system is almost identical to the system declared unconstitutional in McClure vs. Harris, 503 F. Sup. 409, 450, May 19, 1980 (Northern District Court of California), where the Administrative Board was involved in hiring the Hearing Officers. The Hearing Officers were trained by the Board. The training was voluntary. The training was non-professional. The Hearing Officers were formerly employed by the Board.

The Hearing Officers' compensation was fixed by the Board. A

Hearing Officer's compensation was dependent on whether he was hired on a case by case basis to hear cases. If he didn't rule for the Board, then he would not necessarily be used again as a hearing officer. In order for the case to come before a Hearing Officer, there already had to be a denial by the Board.

In the instant case, there was, of course, no such denial as there never was the required Probable Cause Proceeding for Lebbos. State Bar Rule of Procedure Rules 508, 509, 510, 511 were all violated in the Lebbos case in Bad Faith.

But the procedure envisions there would be such a denial by the issuance of a Notice, after Probable Cause was found to exist.

In McClure v. Harris, supra, the court stated the following :

" It is well-established in order to satisfy the fair hearing requirement of the Due Process Requirement, a Tribunal, whether Administrative or Judicial, must be impartial. This is violated when the Hearing Office's impartiality is compromised by being vicariously involved. Even if they have not participated personally in the hearing stage in any case in which they adjudicate, they are sufficiently vicariously involved when they are appointed by, and serve at the will of the carrier which not only participated in the prior stage of their case but has twice denied the claims which are the subject of the hearing. (emphasis added) Such hearing officers can only rule in the beneficiary's favor by directly overturning the Carrier's decision. They are further compromised by pecuniary interest (emphasis added) in currying the Carriers favor in that their income as hearing officers is entirely dependent on the Carriers' decisions regarding whether and how often, to call upon their services. When this is so, and there is other indicia of potential bias such as no mean-

ingful selection criteria (emphasis added) governing the appointment of hearing officers, when the occasional training sessions are presented by the Carrier, attendance at which is voluntary, and the Hearing officers receive their only training from the Board they are called upon to review, (emphasis added) then, while each of these factors by themselves, might not deny the Constitutional requirement of impartiality, their combined fact is constitutionally impermissible"

The State Bar Rules of Procedure envisage that the state bar prosecutors and judges are all trained informally together. The training comes solely from the state bar prosecutors. It is voluntary, non-professional. It is arranged by the same board that employs both the paid referees or judges and the prosecutors.

State Bar rule of procedure rule

111 provides that the executive committee of the alleged "State Bar Court" (2) may provide formal programs for the information and training of newly appointed referees and cause to be prepared and distributed information as to State Bar procedures for members of the legal profession or of the public, or both."

This state bar court consisted, at the time of the Lebbos proceeding, " of members of the state bar and non-lawyers appointed by the Board of Governors, and two non-lawyers appointed by the Governor. The foregoing shall be officers of the State Bar Court and shall be known as referees. From time to time the Board of Governors may make additional appointments and

may leave unfilled vacancies in such additional membership. The terms of office of those persons appointed by the Board of Governors shall be terms as prescribed by the Board of Governors, but such persons shall serve at the pleasure of the Board of Governors." State bar rule of procedure, rule 100, " The state bar court."

In sum, this alleged court is so unstable and fluid that 23 private persons can change its composition at will, with no reason, and with no definite cause or excuse. When it claims to have non-lawyers sit as judges, that means an alleged court with persons who are not " Court Officers " may be peopled with non-Court persons making decisions about the legal profession.

The state bar court is unconstitutional as it is without any proper judges or officers.

That rule now provides that " the state bar court is the court created pursuant to section 6086.5 of the Business and Professions Code, consisting of judges and judges pro tempore." However, section 6086.5 is void and unconstitutional and creates no state bar court. We, the voters create our own courts. We, the Voters, elect and remove our own judges to our own courts. We, the Voters, never voted to create a state bar court. We, the Voters, never voted to have any judges to this court. We, the voters, can not elect and remove these alleged judges as required by our state Constitution.

We, the voters never authorized the state supreme court to remove our right to vote to elect judges. Their claiming to appoint judges is unconstitutional and outside the scope of their judicial duties as well as the unlawful delegation of the public power to choose judges to them, sitting not in their official duties, but as private citizens. Article 6, sections 1, 9, and 16; article 2, section 8; article 4, section 1 and 16 (B), Ca. Constitution; Amendments 5 and 14 of the US Constitution.

Further, in claiming to have judges pro tempore, the instability and lack of public accountability is even more apparent as the new rules provide for unappointed judges as well.

Since only the state bar prosecutors have any input into selection of any judges through their voice with their employer, the Board, the nine alleged judges appointed hy the state supreme court include those formerly employed as prosecutors or employees of the state bar or those loyal to the state bar's political agenda. Ca. Business and Professions Code section 6079.1

This transfers the state bar's political ideology into its role in discipline. It taints and bars its ability to perform the latter assigned role with the required neutral detachment required of a proper entity. In re Murchison (1955) 349 U.S.133, 75 S.Ct.626, 99 L.Ed. 942.

With the public unable to elect or remove these judges as required by article 6, section 16 of the California Constitution, a self-perpetuating system of political prosecutions is engrained and ensured with no fair hearings or tribunals.

As in McClure, supra, there is no meaningful selection criteria for the hearing officers. The prosecutor chooses whomever he wants. He tells the presiding referee of the alleged state bar court. The presiding referee then appoints the person the prosecutor wants. State bar rule 113 (d). An unconstitutional state statute even allows the required three man panels to be abolished at the will and whim of the presiding referee. Ca.

Business and Professions Code section 6079. (3)

In sum, the state bar court appears to be unconstitutional as the prosecutors and the judges are co-employees. They are paid from the same paycheck financed with private and compelled funds. The training is from the same board that files the charges. It is voluntary and by the same board. It is informal. Both prosecutors and judges are housed together in the same State Bar building. There is no meaningful selection criteria of hearing officers. The alleged judges have to overrule their own principal's agent in order to find

(3) I am informed and believe this abolition of the three person panel was done in the Lebbos case with the appointment of a solo volunteer who was 83.

for the attorney. With no separation of the prosecutorial and adjudicative functions in reality, but those units having the same ideological and political and personal paycheck and loyalties to a system of trade group compulsions, McClure, supra, appears to dictate a ruling the state bar court is unconstitutional.

Previous decisions upholding the constitutionality of the state bar act when the referees were private attorneys and not paid employees of the prosecutor's employer and which had three person panels are not applicable as now we are dealing with an alleged state bar court which directly employs both the prosecutors and the single judges and which is claimed under the

Conway, supra case to possess the judicial power to take careers, businesses, and the liberties of lawyers in the state.

V.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT HAS EXEMPTED ITSELF FROM ALL STATE LAW

The concept of Due Process of law is that there is regularity of both procedure and of substance in the workings of any " Court." All of the courts in the state are governed by both state law, the state constitution, and the United States Constitution. Article 6, section 1, Ca. Constitution.

The alleged state bar court is unconstitutional as it has, by statute, exempted itself from all state law, thereby denying attorneys the equal protection of state

law. Skinner v. Oklahoma, 317 U.S. 535, 540, 62 S. Ct.1110 (1942). Refer to Ca. Business and Professions Code section 6000. " No law of this state restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof... shall be applicable to the State Bar, unless the legislature so declares." (4)

Judicial notice of the rules of the alleged state bar court indicate it has abolished the need for

---

(4) Any argument the alleged state bar court is not judicial is refuted by the fact that in the Lebbos ' case, a non-lawyer volunteer claims to have ex parte, without notice or hearing, enrolled the attorney as an inactive member of the state bar, which membership is however constitutionally automatic and not discretionary with the state bar under Article 6, section 9 of the Ca. Constitution.

notice, a hearing, grounds, competent evidence, cross-examination, confrontation, admitting court action, review of constitutional and legal or evidentiary bars, and allows any volunteer to take the right to work of any lawyer ex parte without notice or hearing and have the attorney imprisoned the next day. see State Bar rules of procedure, rules 100, 789-799, Conway v. State Bar, supra.

VI.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT HAS NO SUBJECT MATTER JURISDICTION

It appears that the alleged state bar court is unconstitutional as it has no subject matter jurisdiction. Ca. Business and Professions Code section 6086.5 purports to give this alleged court unlimi-

ted subject matter jurisdiction when read with the state bar's claim that its jurisdiction is the " administration of justice." Keller, supra.

The provisions of the Business and Professions Code give no limitation on their claims to subject matter jurisdiction, which is required of all courts of law. This is the same as saying the alleged state bar court has jurisdiction over all other courts of law, all law, and all persons in the state, including all speech, conduct, activities, be it private, personal, or otherwise.

For example, Ca. Business and Professions Code section 6068 (f), which Amicus understands involves 40 of the 45 charges against At-

torney Betsey Warren Lebbos, all of which Amicus understands were brought by the losing federal court defendant attorneys in Lebbos v. Judges, Santa Clara Superior Court, 883 F.2d. 810 (Ninth) (1989), and other opposing counsel in other on-going suits, states that is the duty of any attorney to " abstain from all offensive personality." One person's " Offensive personality" is another persons's " Justice." The statute is unconstitutional, both on its face, and as applied for vagueness and over-breadth. It can not be the basis of disciplinary charges by an alleged state bar court, as the attorney is denied " fair notice." see State Board of Dentistry v. Blumer, 261 N.W. 2d.186 (1978). Refer to ft.2.

In the article, " Attorney Discipline for " Offensive Personality in California," 31 Hastings L.J. 1097 (1980), its author points out the offensive personality is unconstitutional on its face.

In sum, the lack of finite subject matter jurisdiction with no fair notice and subjective interpretations of political issues voids the state bar court's existence for failure to provide substantive due process of law. See Brandenburg v.Ohio, 395 U.S. 444, 89 S. Ct. 1827, 23 L.Ed. 2d 430. Near v. Minnesota, 283 U.S. 697.

CONCLUSION

This court should take judicial notice there are no mental, legal, or physical competency standards for any of the persons who sit in

the alleged state bar court. Ca. Business and Professions Code sections 6079, 6079.1, state bar rule of procedure, rule 100.

Amicus requests that this court hear the Petition and declare the state bar court void since it has no practical elements required of a Court of Law. As stated in North Pacific S.S.Co. v. Industrial Accident Commission, D.C., Cal. 23 F.2d.109," Proceedings in a tribunal without jurisdiction are void, and an aggrieved party need not seek review, but at any stage, may treat them as null and defend against trespass by their use."

RESPECTFULLY SUBMITTED,

Ronald Z. Berki

RONALD Z. BERKI, ESQ.
960 West Taylor Street
San Jose, Ca. 95126
408-971-1160

Amicus Curiae

VERIFICATION

I have read and prepared the foregoing Amicus Curiae Brief for Petitioner and Motion and declare under penalty of perjury that it's contents are true and correct, based on my own personal knowledge, information, and belief, and this Verification is executed this 19th day of November, 1990 at San Jose, California.

RESPECTFULLY SUBMITTED,

Ronald Z. Berki

RONALD Z. BERKI, ESQ. (Pro Se)
960 West Taylor St.
San Jose, CA 95126

408-971-1160

Amicus Curiae

NOV 20 1990
MOTION FILED
NOV 20 1990

(10)

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF
MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

RAYMOND DUNN, ESQ.(Pro Se)
960 West Taylor Street
San Jose, Ca. 95126

408-293-8670

Amicus Curiae

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER

Now comes Raymond Dunn, Esq. a duly licensed California attorney. He respectfully prays permission be granted for him to file the attached brief Amicus Curiae in support of Petitioner.

This motion is being filed as

the opposing party, Supreme Judicial Court, and Bar Counsel to date have not indicated their consent to the filing of Amicus Curiae briefs in support of Petitioner as required by United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as a lawyer and as a Roman Catholic Priest. The right to vote is precious. As a registered voter, he is interested in not having others purport to vote for him.

He wishes to bring to the Court's attention relevant demographic facts which have not already been brought to its attention and which have not been raised by the parties.

That relevant information concerns the extent to which the " One Person, One Vote " concept is abrogated by the state statutes the Commonwealth of Massachusetts recognized.

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity or Full Faith and Credit apply to a State Bar Court of the California State Bar Association, a private organization.

Amicus requests the Petition be granted so that California citizens are not denied an important vote.

RESPECTFULLY SUBMITTED,

-16-90

RAYMOND DUNN, ESQ.(Pro Se)
960 West Taylor Street
San Jose, Ca. 95126
408-293-8670

Amicus Curiae

QUESTIONS PRESENTED

1. Is a state statute which directs 23 private persons on a board of a California State Bar Association to create a State Bar Court to license California attorneys a denial of " One Person, One Vote " rights to the 30 million other citizens ?

2. Is a state statute which authorizes seven State Supreme Court justices to appoint Judges to such an alleged State Bar Court when Article 6, section 16 of the California Constitution only authorizes judges elected by the voters to sit in any state court a denial of " One Person, One Vote " rights to 30 million other citizens ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

BETSEY WARREN LEBBOS, ESQ.
P.O. Box 40
New Almaden, Ca.
95042-0040

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent Court

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Respondent Bar Counsel

TABLE OF AUTHORITIES

CASES :

Avery v. Midland County, 390 U.S.474 (1968) 6

Hadley v. Junior College District 397 U.S. 50 (1970) 6

Keller v. State Bar, (1990) 495 U.S.____, 110 L. Ed. 2d. 1, 110 S. Ct.____, overruling 767 P.2d. 1020, 255 Cal. Rptr. 542 (1989) 8

Norton v. Shelby County, 118 U.S. 425, 30 L. Ed.178, 6 S.Ct. 1121 8

UNITED STATES CONSTITUTION

Amendment 1 4

Amendment V 5

Amendment XIV, section 1 5

Article VI, section 2 5

CALIFORNIA STATE STATUTES

Ca. Business and Professions Code :

Sections 6010-6015 12

Section 6011 13

Section 6013 15

Section 6013.4 13

Section 6013.5 13

Section 6021 13

Section 6079.1 17

Section 6086.5 11

TABLE OF CONTENTS

Page

Questions Presented.....1

List of Parties..... 11

Interest of Amicus 1

Constitutional Provisions.....4

Summary of Argument..... 6

Argument 7

I. The statutes creating an alleged State Bar Court, Judges, and Involuntary Inactivity are Unconstitutional as a denial of equal protection of the law 7

Conclusion..... 22

Verification..... 25

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

INTEREST OF AMICUS

Amicus is interested in this Court hearing the tendered Petition. Unless heard, it is doubtful another Petition with such a clear statement of United States Consti-

tutional issues could ever be filed.

This arises from the inability of California attorneys obtaining a written decision from the California Supreme Court. With the statutes and rules now providing that its denial of a Petition without an opinion permits the alleged State Bar Court order to be the final and enforceable order suspending or disbarring any California attorney, while the State Bar is prohibited as an administrative agency from deciding any constitutional or law issues under Article 3, section 3.5 of the California Constitution, said decisions may not address any constitutional claims.

With no decision for this

court to review, it would be difficult for it to undertake review.

Since the Petitioner has gone to the expense and trouble to go to another state and obtain a reviewable final judgement from its State Supreme Court, since she could obtain none in the State of California, she should be heard in order for California citizens, voters, and attorneys to be heard.

Amicus requests leave to file a brief Amicus Curiae for Petitioner as he is interested as a duly licensed California attorney and a Roman Catholic Priest as well as a registered voter.

He addresses herein the need to not have another state recog-

nize the California system which is founded on allowing 23 private persons to vote to create a court and seven persons permitted to vote to choose judges to it.

The tension between government and citizen is best exemplified by the government passing statutes allowing only select persons to vote.

All references hereinafter, unless otherwise indicated, are to sections of the California Business and Professions Code.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION

Amendment 1. Congress shall make no law ... abridging the freedom of speech, ...; or the right of the People ... to petition the Government for a redress of

grievances.

Amendment V. No person ... shall be deprived of life, liberty, or property, without due process of law...

Amendment XIV, section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Article VI, section 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof... shall be the supreme Law of the Land; and

the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of an State to the Contrary notwithstanding.

SUMMARY OF ARGUMENT

The question presented is whether this Court's rulings which provide that first amendment and equal protection rights extend to voting applicable to any 'general governmental power over any geographic area,' as stated in Avery v. Midland County, 390 U.S. 474 (1968), and extended in this Court's ruling in Hadley v. Junior College District 397 U.S. 50 (1970), apply to invalidate a state legislative scheme where only 23 private persons were allowed to vote to create a court,

and seven persons allowed to vote to select judges to it when that court now purports to exercise governmental power to license California lawyers.

Amicus submits that the Massachusetts judgment must be reversed as recognition by it of an alleged State Bar Court effectively disenfranchises 30 million United States citizens in California. In 1966 the voters voted not to allow their legislature to create any new courts and they have never voted to allow 23 private people to do so either.

I.

ARGUMENT

The State Bar Court and its alleged " Judges are Unconstitutional as a Denial Of " One Person, One Vote "

Pursuant to Norton v. Shelby County, 118 U.S. 425, 30 L. Ed. 178, 6 S.Ct. 1121, an unconstitutional court has no judges, process, orders, or proceedings.

What is not addressed in whether a state court is unconstitutional when it is created without the vote of the People and in fact, against the prior vote of the People of a state.

The substantial federal question is that such a defective court may now determine who will be available to the citizens as their protector lawyers. Lawyers are essential to the public being protected from their own government. Without those lawyers, they have no protection.

Amicus believes this court's decision in Keller v. State

Bar, (1990) 495 U.S.____, 110 L. Ed. 2d. 1, 110 S. Ct._____, overruling 767 P. 2d. 1020, 255 Cal. Rptr. 542 (1989), was very clear.

This Court stated that the California State Bar Association is not a governmental agency, for purposes of a Federal question. It is a private membership trade group.

Unlike other states, the California State Bar Association was not created by either the Judicial branch or by its members. It was created by the state legislature in 1927. The trade group is an agent of the legislative branch and not of its members.

The regulation of the legal profession is effectively done by

the Legislature by statute and not the Judiciary. With this court's decision holding that requiring attorneys to join a bar association is constitutional, but that the California State Bar Association is not governmental, the California State Bar Association still insists it is governmental as now both the state legislature and the state supreme court have authorized it to have a State Bar Court and to, in effect, license California lawyers.

The caveat here is that although California Supreme Court review is theoretically available to contest anything the State Bar claims, as a practical matter all Petitions are being denied. Thus, the one exercising the governmental power to license California attor-

neys is their own opponents and competitors in a trade group and not any entity that is empowered by the People to exist and possess their power.

The legislative control is so great that it even dictates who will be on the Board of the California State Bar Association so that the members themselves do not have a true vote in their own trade group.

Is Section 6086.5, which provides, " The Board of Governors (of the California State Bar Association) shall create a State Bar Court.." a denial of citizens' rights to "One Person, One Vote ?" Is section 6079.1 which permits the seven Justices of the State Supreme Court to choose judges to

it also a denial of " One Person, One Vote ? "

The Board of Governors of the California State Bar Association is composed of 23 private persons. Sections 6010-6015.

Since all of the voters in 1966 voted to reserve to themselves the right to directly vote to create any new courts and deleted all legislative authority to create any new courts, all 30 million United States citizens' rights to vote are substantially affected. (1)

Throughout the composition of the State Bar 23 member board, the

(1) Art.6, Secs.1 and 9, Ca. Consti. The voters also voted in 1966 to designate the California State Bar Association as a corporation, and not a Court, which vote is voided by the state statutes at issue.

' One Person, One Vote ' rule is ignored both internally and externally. Sections 6011-6013.5, 6021. Only 16 out of the 23 Board members are, in fact, voted on by any compelled state bar members. Sections 6012-6013.

The President of the Bar is chosen by the Board itself. Section 6021.

One of the 23 seats is for a member of the California Young Lawyers Association. Section 6013.4. This is an association created by the State Bar Association itself. Compelled dues, without the consent of the membership, finance and run its operations. It was an association created without the vote of any compelled member to give special help and assist

ance to lawyers under the age of 35 and to try and enlist them to become active in the California State Bar Association's activities. Thus the dues are used from all to sponsor just the few. 40 per cent of all California lawyers are under the age of 35. Thus, one of the 23 votes is that of an agent of the State Bar organization itself.

The sixteen out of 23 board members who are voted on by the compelled members are chosen from nine Bar Districts that were created in 1927. Those Bar Districts have no relationship to number of attorneys, population, or voters in them.

In one Bar District 4000 attorneys have no vote, whereas in another, 1,600 attorneys have the

equivalent of three votes apiece.

The remaining six " Public members " (non-lawyers) are appointed by the Governor, or the Senate Rules Committee, or the Speaker of the Assembly. Section 6013.5.

Almost 1/3 of the board members actually ever voted on by any compelled member are from Los Angeles County. Section 6013 (c). Los Angeles County has five votes out of the 23.

However, Bar Districts 2, 4, 5, 6, and 8 with almost 40,000 active attorneys compared with Los Angeles' 36,612 have the same five votes as Los Angeles, thereby disenfranchising 4000 active attorneys in Bar Districts 2, 4, 5, 6, and 8. With Bar District 5 having 5765 active attorneys, only

1765 have an effective vote while 4000 do not, compared with the 1,657 in Bar District 1 who have almost the equivalent of three votes apiece.

Bar District 1 with 1,657 active attorneys has the same vote as Bar District 8 with 10,867. Bar District 1 covers California north of San Francisco, which is by and large rural. Bar District 8 covers the urban areas of San Diego, Riverside, Orange, San Bernadino, and Inyo Counties. Thus, those in Bar District 8, an urban area, have the equivalent of about one/ tenth of a vote. When Los Angeles has five votes with 36,612 active attorneys while Orange County and the other four counties surrounding it have only one vote with 10,867,

Orange County attorneys' votes are diluted by about one-third.

This can be attributed to the fact that the 1,657 active attorneys who serve 356,660 registered voters and a total population area of 1,153,100 citizens in District 1 have the same vote as an area with 10,867 active attorneys serving 2,193,845 registered voters and a total population of 4,761,000 citizens in District 8.

Bar District 5 is treated equally to Bar District 1, although it has double the population of District one- 2,172,600 compared with 1,153,100 citizens. Santa Clara, Contra Costa, and Alameda counties (District 3), although diluted in vote in relation to Bar District 1, have far greater voting power

with two votes than Inyo, San Bernadino, Riverside, Orange, and San Diego (Bar District 8) with one.

The former with 3,506,200 citizens have two votes while the latter with 4,761,000 citizens have only one. With a general population of only 3,564,440, and with five votes, District 7 (Los Angeles) can control the board while District 8 with 4,761,000 citizens, has a minority vote of one.

Where one seat is for an appointee from the Senate Committee on Rules, that Committee is not even representative of the 40 Senators or any other committees or the population at large. The Public did not elect these Senators to pass statutes claiming

they sit on other boards or agencies and determine policy of private membership groups in the state.

Thus, to the extent that the legislature has delegated to one of its committees the power to vote to select a person to sit on a private membership group, it is ultra vires their official functions under Article 4, Section 1 of the California Constitution.

The same unlawful ultra vires unconstitutionality applies to the seat filled by the Speaker of the Assembly. The statute which permits the Governor to fill four seats with his own political appointees also unlawfully deprives both the compelled attorney members and the population at

large of their right to vote as the function of the Governor is to execute the law and fill interim vacancies in judgeships in courts, but his constitutional duty does not include making political appointments to a private membership board.

Where the seven remaining seats on the Board include one from the California Young Lawyers Association, since 40 percent of the lawyers are under 35, those under 35 are given the equivalent of two votes to the one vote for every lawyer over 35, where the older lawyer is given one at all.

Of the 16 attorney member votes, Districts with the following general populations are all treated equally with one vote a-

piece: 1,153,100; 727,400; 2,172,600; 2,140,300; 4,761,000; and 2,577,100.

The disparity in population is so great that over four million citicitizens in one District have no vote. (Compare District 1 with District 8)

Thus, the 9 Bar Districts violate both internally and externlly the requirement of ' One Person, One Vote.' The remaining 7 seats abolish all votes of the people, and thus, merely reflect the fact that the State Bar is not democratically organized, but is a hegemony of the few who do not represent either a) their own members or b) the general population, or c) any registered voters.

CONCLUSION

This statistical data is furnished at this time as it indicates the importance of hearing the Petition. In Keller, supra, this court held the following :

" The State Bar of California was created, not to participate in the general government of the state, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. Its members and officers are such not because they are citizens or voters, but because they are lawyers. "

In fact, six of the 23 officers who sit on the board of the State Bar are non-lawyers. They are elected by the government and not the compelled members. Amicus believes that all the statutes creating the State Bar of California are, in

fact, unconstitutional as a violation of separation of powers and the right to vote of the 122,000 compelled members.

When the Full Faith and Credit clause requires recognition of the " public acts, records, and judicial proceedings," of a sister state, it would appear clear that Massachusetts was required to recognize the California Constitution first. It dictates the California State Bar Association is a corporation. Article 6, section 9, Cal. Constitution. It dictates that all judicial power is in its California Supreme Court, Courts of Appeal, Superior Courts, Municipal Courts and Justice Courts. Article 6, section 1, Cal. Constitution.

The Petition should be heard

to reverse and vacate the Judgment on the basis that the rights of 30 million California citizens to vote to create their own courts and elect and remove their own judges to their own courts are abrogated by state statutes asserting that 23 private people vote instead.

RESPECTFULLY SUBMITTED,

11-16-90

RAYMOND DUNN, ESQ.(Pro Se)
960 West Taylor Street
San Jose, Ca. 95126

408-293-8670

Amicus Curiae

VERIFICATION

I have read and prepared the foregoing Amicus Curiae Brief for Petitioner and Motion and declare under penalty of perjury that it's contents are true and correct, based on my own personal knowledge, information, and belief, and this Verification is executed this 16th day of November, 1990 at San Jose, California.

RESPECTFULLY SUBMITTED,

Raymond Dunn

RAYMOND DUNN, ESQ.(Pro Se)
960 West Taylor Street
San Jose, Ca. 95126

408-293-8670

Amicus Curiae

(11)

No. 90-401

FILED
NOV 20 1990

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

REVISED
MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

JOHN B. GUNN, ESQ. (Pro Se)
JOHN B.GUNN LAW CORPORATION
111 N. Market Street
Suite 707
San Jose, Ca. 95113

408-298-5888

Amicus Curiae
for Petitioner

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

REVISED MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT Of PETITIONER

Now comes John B. Gunn, a duly licensed and practicing California attorney and counselor at law for 33 years and requests leave of court, pursuant to United States Supreme Court Rule 37, to file an Amicus Curiae brief at the Petition stage in support of this Honorable

Court's grant of the Petition for a Writ of Certiorari and for Petitioner, Attorney Betsey Warren Lebbos.

Amicus is interested as it appears the alleged State Bar Court is unconstitutional due to its creation in conflict with Article 6, sections 1, et. seq. of the California Constitution by asserting it has a) co-extensive and co-equal subject matter jurisdiction over licensing of lawyers to that of the State Supreme Court, and b) co-equal and co-extensive subject matter jurisdiction to try the merits of law suits pending in the constitutional courts of law.

This motion is filed now in order to comply with the deadline as the opposing party, Supreme

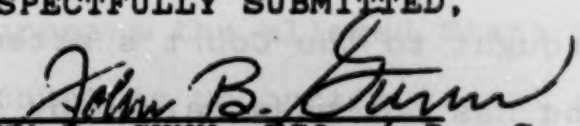
Judicial Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

This information has not already been brought to the Court's attention and has not been raised by the parties, except indirectly by Petitioner.

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity or Full Faith and Credit may be applied to statutes creating an alleged State Bar Court of the California State Bar Association, a private organization. Thus, Amicus re- he be permitted to file the enclosed Amicus Curiae brief and he re-

quests the Petition be granted so that attorneys are not forced to try their cases in two alleged courts at the same time and lose their right to work if they refuse to do so.

RESPECTFULLY SUBMITTED,



JOHN B. GUNN, ESQ. (Pro Se)
JOHN B.GUNN LAW CORPORATION
111 N. Market Street
Suite 707
San Jose, Ca. 95113

408-298-5888

Amicus Curiae
for Petitioner

Supreme Court, U.S.
FILED
NOV 26 1990
JOSEPH F. SPANIOL, JR.
CLERK

(12)

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF
MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF AND APPENDIX IN SUPPORT OF PETITIONER

JOHN RAKUS, ESQ.
PRESIDENT
CALIFORNIA JUSTICE
FOUNDATION
1617 Sixteenth Street
Sacramento, Ca. 95814

916-443-7769

Amicus Curiae

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,
Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Respondent

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER AND THIS COURT GRANTING HER PETITION

Now comes JOHN RAKUS, ESQ., President of the California Justice Foundation and moves for leave to file the attached brief as Amicus Curiae in support of Petitioner and this Court hearing her Petition.

This motion is being filed as the opposing party, Supreme Judicial Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus wishes to bring to the Court's attention relevant matter which has not already been brought to its attention and which has not been raised by the parties. That relevant information concerns the need for a declaration of unconstitutionality of the State Bar Court of the California State Bar Association by reason of its multiplicity of conflicts in being a Court because of its private, pecuniary, profit-making, political, and entrepreneurial activi-

ties and its agency status for a private trade group involved in coerced association.

Amicus believes that those activities are dispositive of the issue as to whether another state may treat such a private State Bar Court as if it were a court of law entitled to Full Faith and Credit or Comity.

For the foregoing, Amicus requests the attached factual information explaining those conflicts be permitted to be considered in this Honorable Court's decision to hear this serious Petition.

RESPECTFULLY SUBMITTED,

JOHN RAKUS, ESQ.
PRESIDENT
CALIFORNIA JUSTICE FOUNDATION
1617 Sixteenth Street
Sacramento, Ca. 95814
916-443-7769

Amicus Curiae

QUESTION PRESENTED

1. Does the Due Process clause of the United States Constitution permit a private membership Bar Association to create a State Bar Court to license lawyers when that Court is the agent of a private membership trade group involved in coerced association and other conflicting personal, profit-making, entrepreneurial, partisan, pecuniary and lobbying activities ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

BETSEY WARREN LEBBOS, ESQ.
P.O. Box 40
New Almaden, Ca. 95042-0040

Petitioner Attorney

HON. PAUL J. LIACOS
Senior Justice
Supreme Judicial Court of The Commonwealth of Massachusetts
Room 1412, Court House
Boston, MA. 02108

Respondent

DANIEL J. KLUBOCK, ESQ.
Bar Counsel
Board of Bar Overseers
75 Federal Street
Boston, Mass. 02110

Bar Counsel

Table of Authorities

Abood v. Detroit Board of Education, (1977) 431 U.S. 209, 235, 97 S. Ct. 1782, 1799 — 29

Carpenter v. state bar, (1931) 295 P. 23, 211 C. 358 — 28

Clark v. Willett (1868) 35 C. 534 — 13

Conway v. State Bar, 47 Cal. 3d. 1107 (1989) — 27

Erdman v.Stevens, C.A.N.M., 458 F.2d. 1205, cert. denied 93 S.Ct. 126, 409 U.S. 889, 34 L.Ed. 2d. 147 — 21

Elrod v. Burns, 427 U.S. 347, — 20

Ex Parte Garland, (1867) 71 U.S. (4 Wall) 333 — 21, 22

Ex Parte Robinson, 19 Wall.513 (1873) — 31

Herron v. State Bar of California, (1944) 147 P. 2d. 543, 24 C.2d.53, certiorari denied 65 S.Ct.82, 323 U.S.753, 89 L. Ed. 603, rehearing denied 65 S.Ct. 128, 323 U.S. 815, 89 L. Ed. 648. — 29

Hill v. State Bar of California, (1940) 97 P.2d.236, 14 C. 2d.732 — 28

In re: Cate, (1928) 273 P. 617, supplementing opinions 270 P. 968 and 271 P.356 — 13, 28

Keller v. State Bar of California 495 U.S. ____ 110 L.Ed. 2d. 1, 110 S.Ct. ____ June 4,1990, overruling 767 P.2d.1020 (1989) 2,14,17,23 33,40,41

Keyishian v. Board of Regents, 385 U.S. 589 20

Lathrop v. Donohue, (1960) 367 U.S. 843, 319 U.S. 624, 63 S. Ct. 1178, 87 L.Ed. 1628. 23

Machinists v. Street, 367 U.S. 740 19

Martello v. Superior Court (1927) 202 C. 400, 261 P. 476 11

Miller v.Board of Public Works, 195 Cal. 477, 234 P. 381, 38 ALR 1479, 32

NLRB v. Employee's Department of Hanson, 353 U.S. 225 19

Norwood v. Kentfield (1867) 34 C. 329 11

Pacific Gas and Electric Co. v. Public Utilities Commission (1986) 475 U.S.1, 10-11, 106 S.Ct.903, 908-909, 89 L.Ed.2d.1 14 20

Pearson v. Great National Railway Co. 161 U.S. 646, 40 L. Ed. 838, 16 S. Ct. 705 32

Perry v. Sinderman 408 U.S. 593 20

Roberts v. United States Jaycees (1984) 468 U.S.609,623, 104 S. Ct. 3244, 3252, 82 L. Ed.2d.462 14, 20

Shurbun v. Hooper (1879) 40 Mich. 503 10

Warner v. Thomas (F.) Parisian Dyeing and Cleaning Works (1895) 105 C. 409, 38 P. 960 11

West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 642 21, 25

California Constitution:

Article 2, section 8 12

Article 3, section 3 12

Article 4, section 1 12

Article 4, section 16 12

Article 6, section 1 12

Article 6, section 7 12

Article 6, section 9 12,13,16,18, 20

Statutes:

Ca. Business and Professions Code sections:

Section 6000 18,26

Section 6001 18,26

Section 6002 18,26

Section 6003 18,26

Section 6004 18

Section 6005 18

Section 6007 27,41

Sections 6010-6015 26

Section 6028 35

Section 6031 18

Section 6041.1 34

Section 6079.1 18

Section 6086.5 18,34,41

Section 6125 18,26,41

Section 6126 (b). 18,45

Section 6140 26

Section 6141 26

Section 6140.5 26

Section 6141 26

Section 6143 26

California Code of Judicial Conduct:

Canon 1 39

Canon 2 (B) 39

Canon 3(A)(1) 39

Canon 3(C) 39

Canon 5 39

Canon 7 39

Articles:

Coke, Commentaries on the Magna Carta 8

Mayda, " Lawyers under Communism: A 'New' Legal order in Czechoslavakia, 39 A. B.A.J.1071 (1953) 17

Peselj, Legal Trends in People's Democracies," 22 Geo. Wash. L. Rev. 513, 551-552 (1954) 17

Note 45 Schweizerische Juristenzeiteng 48 (1949) 17

Table of Contents

Question Presented.....1

List of Parties..... 11

The interest of the Amicus.... 1

Constitutional and Statutory Provisions Involved.....3

Summary of Argument..... 4

Argument In Support of Petition.5

I. A substantial federal question arises if California attorneys are the only ones licensed by a private court 5

II. The State Bar Court is unconstitutional as it is the agent of a corporation involved in coerced association 20

A. If the State Bar is an arm of the state as a Public Corporation, then private attorneys may not be forced to be automatic members or pay for it 23

B. Since compelled private members are required to pay private dues to finance a prohibited private court, the state bar court is unconstitutional 25

III. The State Bar Court is unconstitutional as it is privately run without Public approval, audit, or accountability 33

IV. The State Bar Court is unconstitutional as it is the agent of a corporation involved in private activities 35

A. The state bar's activities involve profit-making, proprietary, and entrepreneurial activities 35

B. The state bar's activities involve impermissible political and lobbying activities 39

Conclusion.....45

No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

The Interest of Amicus

Applicant respectfully requests permission to appear to file an Amicus Curiae brief in support of Petitioner. He does so both on his own benefit personally and on behalf of the

California Justice Foundation. As duly licensed attorneys and registered voters, their mutual concern is that citizens not be coerced into forfeiting their reserved powers under the Tenth Amendment.

Applicant believes this Court should not tolerate deviations from this court's clear decision in Keller, of California 495 U.S. ____ , 110 L. Ed. 2d. 1, 110 S. Ct. ___June 4, 1990. Amicus believes that an alleged State Bar Court is unconstitutional as the California State Bar Association is a private trade group. This is the appropriate and may be the only Petition in which this issue can now be resolved as there will be no decisions of the state's highest court, the Cal-

ifornia Supreme Court, for this Court to review. The California Supreme Court has now passed rules asserting that they no longer will review all attorney discipline cases, but will deny review to some attorneys. As such, their denial of hearing a Petition makes the alleged order of the bar association the judicial order of suspension or disbarment on a claim that the bar association may have a " State Bar Court."

Constitutional and Statutory Provisions Involved

United States Constitution: Amendment 1. Congress shall make no law ... abridging the freedom of speech, ...; or the right of the People ... to petition the Government for a redress of

grievances.

Amendment V. No person ... shall be deprived of life, liberty, or property, without due process of law...

Amendment XIV, section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The California Constitutional and statutory provisions appear at the Appendix at A.

Summary of Argument

The Judgment of the Supreme

Judicial Court of the Commonwealth of Massachusetts should be reversed as the California system based on an alleged State Bar Court is constitutionally inadquate. Such an alleged private court was not created by the sovereign power of the People. It is an agent of a private membership trade group and is disqualified from being a court due to its principal's involvement in a multiplicity of private, pecuniary, political, lobbying, and entrepreneurial activities at odds with the requisite neutrality and non-partisanship of a Court of law.

Argument in Support of the Petition

I.

A substantial federal question arises when California attorneys are the only ones licensed by a private court

The implications of having one state's lawyers licensed by a private court instead of their constitutionally-authorized and public admitting court are far-ranging. California is the most populous state in the United States. With a population of 30 million citizens, its people comprise more than the populations of 21 other states and the District of Columbia combined. One out of every eight United States citizens resides in the State of California. They are twelve percent of all United States citizens. Their attorneys number in excess of 122,000.

If California attorneys are no longer available to assist this large population, out of fear their

opponent will have them disbarred or suspended if they sue select persons, then it is doubtful the rule of law can be maintained.

One state's lawyers will have to comply with a private opponent's standards while the rest of the attorneys in the United States must only comply with their admitting court standards.

Prohibitions on private courts emanates from the Magna Carta. Historically, the King sent out couriers or bailiffs to hold courts of common pleas in the countryside. This was done without notice. The couriers or bailiffs often confiscated the goods or property of peasants it adjudged guilty and kept those goods as payment to themselves.

Lord Coke in his Commentaries on the Magna Carta spoke of this corrupt practice and its abolition with a requirement that the King's representatives be paid solely out of the public coffers and not by private money. Since that time it has not been doubted that a private court could not exist in our Democracy.

There is a substantial difference between public and private power. Public courts are taxpayer funded. Their officers in the state courts are elected and removable by the voters. Their proceedings are open to the public. Any deficit in mental, legal, or psychological competency of any judge can be redressed through the ballot box and/ or proceedings before a Commission to

remove the judge. There are no other duties of the public courts other than to decide cases. They can not have private, profit-making or entrepreneurial functions. They can not lobby on a variety of political issues. Their structure is such that they are not involved in inherent conflicts of interest as is the California State Bar Association. No private monies fund the operations of the public Courts.

There is a significant Federal question. If due process of law permits licensing of California's " Court Officers" by their own private opponents and competitors, the quality of legal representation will suffer and all citzens will suffer.

California prides itself on be-

ing a leader in the nation. There is even a saying, " So goes California, so goes the nation." What will happen nationally to the legal profession and the quality of legal services if attorneys are too frightened to represent members of the Public ?

II.

The State Bar Court is unconstitutional as it is the agent of a corporation involved in coerced association

A " Court," within the meaning of the Constitution is a permanent tribunal for the administration of Justice, and not one of those special tribunals which are occasionally called into existence by particular exigencies and that cease to exist with such need. Shurbun v. Hooper (1879) 40 Mich. 503. Consent

cannot create a Court. Norwood v. Kentfield (1867) 34 C. 329. The creation of the courts is an affair of government, and may not be subordinated to private convenience or private interest. Martello v. Superior Court (1927) 202 C. 400, 261 P. 476. Courts are organized for the purpose of determining the controversies between litigants according to their respective rights. Warner v. Thomas (F.) Parisian Dyeing and Cleaning Works (1895) 105 C. 409, 38 P. 960.

A Court must be the agent of the State and represent the sovereign power of the People. It may not be created by and for private, unelected persons. Article 4, section 16 of the California Constitution specifically prohibits such

special interest, private legislation as a statute delegating to 23 private, unelected persons the power to create a private state bar court.

In 1966, the People abolished all legislalative authority to create any new courts in the state of California, reserving to themselves the power directly to vote to create any new court. No one voted to create a State Bar Court. It is, therefore, void under Article 6, sections 1 and 9, article 4, sections 1 and 16, article 3, section 3, and article 2, section 1 of the California Constitution.

The State Bar Association is composed of automatic attorney members who are licensed to practice law by the state supreme court.

Article 6, section 9, Ca. Constitution. Attorneys are not Public officers, but are private, unelected persons selected to aid in the conduct and presentation of cases and disputes before the constitutional courts of law, are selected by their admitting state supreme court, and are " Court Officers," but not Public Officers of the state. In re: Cate, (1928) 273 P. 617, supplementing opinions 270 P. 968 and 271 P. 356, Clark v. Willett (1868) 35 C. 534.

A. If the State Bar is an arm of the state as a Public Corporation, then private attorneys may not be forced to be automatic members or pay for it

Compelled private association with and coerced private membership with a state unit of political power, as a condition of working in a

state, is Communism and is unconstitutional under the First Amendment guarantees of freedom to refuse to associate with a unit of state power. See Pacific Gas and Electric Co. v. Public Utilities Commission (1986) 475 U.S. 1, 10-11, 106 S. Ct.903, 908-909, 89 L. Ed.2d.1; Roberts v. United States Jaycees (1984) 468 U.S. 609, 623, 104 S. Ct. 3244, 3252, 82 L. Ed. 2d. 462, (The first amendment protects an individual's rights not to associate and not to speak).

In Keller, supra, this Court held attorneys may be required to join a bar association. What is not addressed is whether they can be required to join it when it claims it is not a private trade group but asserts it is part of

the government as the agent of the legislative branch. The court considered that attorneys generally prefer a measure of advisory self-regulation to being regulated by a state government distant from problems of the legal profession.

The fallacy is that California attorneys do not have advisory self-regulation. No member, in fact, votes on their standards of comportment or any processes. The California State Bar Association lobbyist, with no vote from any compelled member, lobbies the legislature to pass the statutes their 23 member board or paid staff wants. No member ever voted on whether the state bar association should be permitted to have a private court or private judges.

No voter in the state did either.

The issue goes beyond trade unionism, where the compelled association and membership is with other private persons. The designation of the State Bar as a " Public Corporation " under Article 6, section 9, of the California Constitution and the state statutes allowing the Governor and a member of the Assembly and Senate to select members of the State Bar's Board of Governors virtually ensures that the State Bar Association acts as an agent of the State legislature and not the agent of the compelled members.

If private attorney membership is automatic with a public unit of state power, California attorneys, unlike all other attorneys in the

United States, are forced to be compelled members of a Soviet-style, state-run, but privately-financed Collegia or Collectiva. See Mayda, " Lawyers under Communism: A 'New' Legal order in Czechoslavakia, 39 A.B.A.J.1071 (1953); Peselj, Legal Trends in ' People's Democracies," 22 Geo. Wash. L. Rev. 513, 551-552 (1954); Note 45 Schweizerische Juristenzeiteng 48 (1949). The statement of the majority in the California's Supreme Court decision in Keller v. State Bar, supra, that, " The California Constitution, statutes, and judicial decisions, however, appear to envision the bar as a governmental agency," Keller v. State Bar, 767 P. 2d. 1020 (1989), at p. 1025, now carried to the extreme of assertin

that the state bar may have a private court and private judges to license lawyers, appears to be a repudiation of common sense.

The conclusion that California attorneys are compelled to be a unit of state power against their will and without their consent in order to work with their licenses to practice law is different from joining a trade group whose existence is limited to trade interests and where no public power is claimed or exercisable.

What is here involved is not trade unionism, but trade group communism.

All of the statutes at issue strike at the heart of the rights of freedom to refuse to associate with and to finance activities of a

state-run collegia of California attorneys, run and controlled, not by their own members, but by the state. Article 6, sec. 9, Ca. Constitution, Ca. Business and Professions Code sections 6000, 6001, 6002, 6003, 6004, 6005, 6007, 6086.5, 6079.1, 6031, 6125, 6126 (b).

Unlike Abood v. Detroit Board of Education, (1977) 431 U.S. 209, 235, 97 S.Ct. 1782, 1799, 52 L. Ed.2d. 262, Machinists v. Street, 367 U.S.740, NLRB v.Employee's Department of Hanson, 353 U.S. 225, the issue is beyond compulsory payment of dues to a private membership trade group. Here the coercion is to affiliate directly with the state in order to work in the entire state. Article 6, section 9,

Ca.Constitution, Ca. Busn.and Professions Code section 6002.

The government may not require an individual to relinquish rights guaranteed to them by the First Amendment as a condition of employment. Elrod v. Burns, 427 U.S. 347, 355-357; Perry v. Sinderman 408 U.S. 593; Keyishian v. Board of Regents, 385 U.S. 589. Among those freedoms must be the freedom to refuse to be automatic and forced members of a public corporation, a unit of state government in power. see Pacific Gas and Electric Co. v. Public Utilities Commission (1986) 475 U.S.1, 10-11, 106 S.Ct.903, 908-909, 89 L.Ed.2d.1; Roberts v. United States Jaycees 1984) 468 U.S. 609, 623, 104 S.Ct.3244, 3252, 82 L.Ed.2d.462.

As stated in West Virginia Bd. of Ed. v. Barnette, 319 U.S.624, 642, the Constitution prohibits the State Supreme Court trying to order private lawyers to be a member of a desired Public group and believe in it and support its political agenda as follows :

" If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Lawyers are licensed to be " Court Officers." Ex Parte Garland, (1867) 71 U.S. (4 Wall) 333, Ex Parte Robinson, 19 Wall.513 (1873); Erdman v. Stevens, C.A. N.M., 458 F.2d. 1205, cert. denied 93 S.Ct.126, 409 U.S. 889, 34 L.Ed. 2d 147. They are not instruments of

the state legislature. In Ex Parte Garland, supra, at page 378, the United States Supreme Court made clear that a legislature does not license " Court officers," as follows :

" The profession of an attorney and counselor is not like an office created by an act of Congress, which depends for its continuance, its powers and its emoluments, upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. Attorneys and counselors are not officers of the United States; they are not elected or appointed in the manner prescribed by the Constitution for the election and appointment of such officers. They are officers of the court; admitted as such by its order,... the order of admission is the judgment of the court... From its entry the parties become officers of the court... "

An Attorney's oath is to the People and their Constitutions, and not to a state government in power.

Ca. Business and Professions Code section 6067, 6068.

The assumption that the police power of a state may be used to create lawyers into a " public corporation," Keller v. state bar, 767 P.2d. 1020 (Cal. 1989), at p. 1026, but then jumping to the assumption that that power may then be used to herd private attorneys into " Goose-stepping state brigades," assumes that the police power may be used to force allegiance to the public policies of a legislature, governor, and supreme court presently in power in order to work in the state. (1) Keller v. state bar, supra, at p. 1026.

(1) Justice Douglas, Lathrop v. Donohue, (1960) 367 U.S. 843. 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628.

By said reasoning, doctors can be forced to be an instrument of the state as a " Public Corporation," under state control, as can dentists, veternarians,accountants, football players, judges, butchers, bakers, and every occupational group in the state, and solely by reason of their occupation, and the state may force them to be members of these public corporations and do public and governmental duties in order to work in the state. Thus, private trade unions become state- sponsored and controlled trade unions, as exists in Communist China.

What is the effective difference between forcing people to pledge allegiance to the flag and forcing them to pledge allegiance

to a public corporation in power ? West Virginia State Board of Education v. Barnette (1943)

In one, the right to obtain a public school education is lost, but in the other, the right to use that public school education to protect the People's constitutional rights not to be forced to pledge allegiance to the Government is lost as the People's Lawyers are forced to pledge allegiance to a particular state government in power themselves. Attorneys can not sue the Government to protect the People from it, as they are part of the Government.

B. Since compelled private members are required to pay private dues to finance a prohibited private court, the state bar court is unconstitutional

In addition to the compelled membership with the state bar association in order for lawyers in California to work, Ca. Business and Professions Code sections 6000, 6001, 6002, these coerced private lawyers are also compelled to pay it dues for purposes without audit, vote, or any fiscal oversight. Ca. Business and Professions Code sections 6125, 6140, 6141,6140.5,6141, 6143, 6001, 6010-6015. Should they fail to pay the annual compelled membership fee to the state bar association, they are suspended as members of the bar, but also they are unable to use their license to practice law from the State Supreme Court. Ca. Business and Professions Code sections 6143, 6125, 6126 (b).

Although the California Consti-

tution makes clear the membership is to be automatic, rather than discretionary with the bar, the state bar has passed statutes claiming it can change membership in its association for any reason at all without misconduct or non-payment of dues. Ca. Business and Professions Code section 6007 (c). With the state bar claiming it can prevent licensed attorneys' working by enrolling them as an inactive member of their bar association, this effectively gives the private trade group the judicial power the People placed elsewhere in their Constitution and places it in the hands of solely private people.

The California Supreme Court's authorization for this private judicial power in Conway v. State

Bar, 47 Cal. 3d. 1107 (1989), is contrary to all of the prior cases limiting the California State Bar Association's existence to being an advisory group. Carpenter v. state bar, (1931) 295 P. 23, 211 C. 358; Hill v. State Bar of California, (1940) 97 P.2d.236, 14 C. 2d. 732.

Originally the state statutes creating a State Bar Association with such judicial power were declared unconstitutional and the statutes were upheld only on condition the State Bar never, in fact, possess such judicial power. In re: Cate, Supra.

When passed, the Board of Governors of the State Bar, which was a democratically-organized representative cross-section of the

attorney members, fixed the fee to be charged and when the fee was used solely to defray the necessary costs of running an advisory volunteer disciplinary group as an adjunct to advisory recommendations for the state supreme court. There was no paid staff, no non-lawyer or public board members, and the Bar Districts represented an equal apportionment of votes for all compelled members. There were no paid employee prosecutors, no paid officers, and no extra-curricula and profit-making or proprietary functions involved. Herron v. State Bar of California, (1944) 147 P. 2d. 543, 24 C.2d. 53, certiorari denied 65 S.Ct.82, 323 U.S. 753, 89 L.Ed. 603, rehearing denied 65 S. Ct.128, 323 U.S. 815, 89 L. Ed.

Whatever justification under the Police Power as a regulatory measure was then warranted in order to accomodate the desire for advisory self-regulation among lawyers, so that they could fulfill their duties to the separate branch of the Judiciary, rather than be faced with a conflict in being regulated by the legislature, whom they might have to sue, is no longer applicable to the facts and circumstances of the California State Bar Association, which is now a unit under the legislature's control and not under the Judiciary.

The justification for dues was for advisory self-regulation concerning infractions involving professional misconduct. Now the dues

are used for a wide variety of personal, political, proprietary, and profit-making purposes as well as bringing those political goals into the disciplinary apparatus impermissibly by prosecuting lawyers for political and not legal goals. Since the dues are no longer used for police power purposes of self-regulation, the compelled membership, the dues, and the use of the dues, including for an alleged State Bar court, are all outside the scope of the police power of a state. The Police power of the state is a law of necessity, and is exercisable only if there is a necessity for the Public's health, safety, morals, and welfare, which prohibits special interest legislation, such as an alleged State

Bar court.

Statutes are constitutional only when they are used to protect the rights of all people. Pearson v. Great National Railway Co. 161 U.S. 646, 40 L. Ed. 838, 16 S. Ct. 705. The interest of the People is their attorneys' independence of state, coerced affiliation. The Police Power is a law of Necessity and is exercizable only for necessity. Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381, 38 ALR 1479, error dismissed. There being no necessity in compelling private attorneys, without their consent, to finance a prohibited special interest, trade group court modeled on those of Communist China, the statute creating an alleged State Bar court is not for

the People's welfare, but against it, and is void under the due process clause of the United States Constitution.

III.

The State Bar Court is unconstitutional as it is privately run without Public approval, audit, or accountability

The fact that the State Bar is not subject to any controlled state audit or accountability for its financial commitments to and for its alleged State Bar court invalidates the alleged State Bar court, as all courts must be responsible fiscally and subject to state oversight control in order to exist. As stated in the Opening Brief in Keller v. State Bar, United States Supreme Court,docket no. 88-1905, p. 3, " Although the Bar must

submit its proposed budget to the Legislature, it does not require legislative approval nor is it subjected to the review processes applicable to other state budgetary items, most notably the Governor's line item veto power. Compare Cal. Busn. and Prof. Code s. 6040.1 with Cal. Consti. IV,s. 10 (b). In fact, the Bar may even compel the Legislature to maintain the annual membership fee at a certain level. See Cal. Bus. and Prof. Code section 6008.5." As stated at p. 4, " The Board of Governors of the State Bar has broad ranging powers under the State Bar Act. In addition to being exempt from the state procedures outlined above, the board may also appropriate and disburse funds without

specific legislative approval or action on the party of the State Controller. Compare Cal. Busn. and Prof. Code section 6028 with Cal. Consti. Art. XVI, s. 7."

Because all courts must be subject to public approval, scrutiny and oversight, and accountability and they must be financed out of public and not with private funds, the State Bar court is unconstitutional under the Due Process of law clause of the State and United States Constitutions as none of the public accountability applies.

IV.

The State Bar Court is unconstitutional as it is the agent of a corporation involved in private activities

A. The state bar's activities involve profit-making, proprietary, and entrepreneurial activities

The State Bar is involved in a multiplicity of activities with compelled dues that involve proprietary functions normally reserved to the free market and free enterprise. One such activity is an exclusive contract with the Los Angeles Daily Journal Corporation for it to publish the official State Bar magazine, California Lawyer, which issues monthly and which yields the Journal Corporation approximately three million dollars in advertising revenues. Those funds have then been used to buy up private, independent, legal newspapers such as The San Jose Post Record and The Advocate Journal, thereby lessening their own competition and restricting the independence of the legal news

and dissemimination of dissenting and other views contrary to the official policy of the California State Bar association.

This lucrative, monopolistic contract is consummated without the vote of the compelled membership, and it yields a substantial restriction on the freedom of the press by giving a monopolistic advantage through the name lending to this private newspaper chain.

Another proprietary function, normally reserved to the free market and free enterprise, is that of publication of law books. The California Continuing Education of the Bar uses the name of the California State Bar Association to promote its series of books and its

profit-making seminars and tapes. The exact parameters of the relationship, financial and otherwise, are not fully known. Suffice it to say that the state bar's position on issues is a favored one. The use of the official name, without the consent or approval of the compelled members,is without their authorization.

In addition, the State Bar is involved in making a profit from its sponsored lectures, tapes, and books and other items it sells. In addition, they are seeking to license para-legals, which will restrain any possible competition by licensed para-legals to that of any lawyer, thereby monopolizing commerce in legal services more than at presently, and which will

also yield additional funds from this profit-making venture for their political, lobbying, and other non-regulatory activities.

B. The state bar's activities involve impermissibble political and lobbying activities

The Judicial Code of Conduct and the Hatch Act prohibit those who are engaged in the business of a " Court " from being involved in political activities, other than as private individuals. refer California Code of Judicial Conduct, Canons 1, 2 (B), 3(A)(1), 3(C),5, and 7.

This is not true of the alleged State Bar Court. Its principal, that finances, runs, and operates it, the State Bar, has a full-time Lobbying DeDepartment. It is finan-

ced without consent of any attorney. The lobbying is done without the consent of the members. It takes positions and lobbies for statutes that are recommended, not by the automatic members, but by those who are permitted to attend the Conference of Delegates, which involves solely those who are members of voluntary local bar associations. Refer Petitioner's Opening Brief in Keller, supra, at p.6. It also lobbies for and has statutes passed for its own self-interest, without any vote of any member, such as the State Bar court statute involved, and the accompanying statutes purporting to transfer licensing of court officers from the Judicial Branch to the Legislative branch of Government. Ca. Bus-

iness and Professions Code sections 6007 (c), 6086, 6086.5, 6125, 6126 (b).

As the Petitioner's Opening Brief in Keller v. State Bar indicated, supra, p. 25 and their Reply Brief at p. 12, the State Bar lobbies for and submits Amicus, without consent of the members, on a wide-ranging spectrum of bills, involving Nuclear freezes, environmental protection, armor-piercing bullets, and any matter that some consider is an " improvement of the laws."

In addition, it privately finances and runs a " Clients Security Fund." The fund determines which victims are to be paid restitution when harmed by their attor-

neys. It also runs a " Prisoner on Parole " program to assist those on parole. In addition, it pays for and runs a California Young Lawyers Association in order to encourage all attorneys under 35 to become active with their membership activities. It also finances grants of up to 20 million dollars for legal services programs. In addition, it favors and sponsors the local bar associations by financing for them the Conference of Delegates. In fact, the voting that takes place in the California State Bar Association is not done by members of the State Bar, but solely the representatives of the local bar associations.

In addition, it has practial training programs for law students,

a group insurance program, a Lawyers Personal Assistance Program to assist attorneys with drug or alcohol problems, a Court Reform Efforts program, a legislation program, an unauthorized practice program, a personal Building Fund program, a Legal Services Trust Fund program, and an " " Ethics Hotline."

All of these special and private interests are supported to the exclusion of other interests. No court of law could ever be permitted to engage in such private activities which favor some while disfavoring other interests. With the State Bar Court a mere agent of all these private interests, and responsible for making sure their employer's programs are successful,

it lacks the neutrality, focus, and concentration necessary for a court of law and is involved in irreconcilable conflicts of interest.

The State Bar court should be declared unconstitutional as it is a political arm of a political organization, whose principal purpose is political aggrandizement. A proper court under the due process of law clause can not be the agent of a political entity, as is the State Bar court, as Courts must be independent, neutral, and non-partisan. It is unconstitutional as it does not adhere to the Hatch Act or the prohibitions of the Judicial Code, a sine qua non, of a court of law.

CONCLUSION

The financing of the Courts is a matter for public allottment, and not private coerced dues of attorneys. Amicus requests the State Bar court be declared unconstitutional as it is privately created, privately financed, and privately run, with no fiscal or political oversight and is the agent of a private membership group, which engages in political, personal, and proprietary functions at odds with the requisite independence, neutrality, and non-partisanship required of a court of law in the United States.

RESPECTFULLY SUBMITTED,

JOHN RAKUS, ESQ.
PRESIDENT
CALIFORNIA JUSTICE FOUNDATION
1617 Sixteenth Street
Sacramento, Ca. 95814
916-443-7769

Amicus Curiae

APPENDIX

California Constitution :

Article 11, section 1. All political power is inherent in the People. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Article III, section 3. The powers of state government are legislalative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by the Constitution.

Article VI, Section 1. Judicial Power: Courts: The judicial power of this state is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All ... courts

are courts of record.

Article VI, section 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record.

California Statutes

(underlining denotes 1989 changes)

Ca. Business and Professions Code Sections :

Section 6000. Short Title. This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act.

Section 6001. State Bar; perpetual succession; seal; powers; revenue, laws applicable. The

State Bar of California is a public corporation.....

No law of this state restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes therof, including but not by way of limitation, the provisions (commencing with Section 11000), Division 4 (commencing with section 16100), and part I (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature so declares.

Section 6002. Members. The members of the State Bar are all persons admitted and licensed to practice

law in this state, except justices and judges of courts of record during their continuance in office.

Section 6002.1 : Official membership records; maintenance of information ; service of notice initiating proceedings; availability of information on records; forms of reports .....

(c) The notice initiating a proceeding conducted under this chapter may be served upon the member or former member of the State Bar to whom it is directed by certified mail, return receipt requested, addressed to the member or the former member at the latest address shown on the official membership records. The service of the mailing is complete at the time of mailing

but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the notice is served by mail shall be extended five days if the place or address is within the state of California, wo days if the place of address is outside the state of California but within the United Statesm and 20 days if the place of address is outside the United States.

Section 6003. Classes of members. Members of the State Bar are divided into two classes: (a) Active members (b) Inactive members.

Section 6004. Active members. Every member of the State Bar is an active member until, by action

of the board of governors as in section 6007 of this code provided or at his request, he is enrolled as an inactive member.

Section 6005. Inactive Members. Inactive members are those members who have requested that they be enrolled as inactive members or who have been enrolled as inactive members by action of the board of governors as in Section 6007 by this code provided.

Section 6006. Retirement from practice; Privileges of inactive members. Inactive members are not entitled to hold office or vote or practice law. Those who are enrolled as inactive members at their request may, on application and payment of all fees re-

quired, become active members. Those who are enrolled as inactive members *** as in secion 6007 of this code provided may become active members as in section 6007 provided.

Inactive members have such other privileges, not inconsistent with this chapter, as the board of governors.

Section 6007 (c) (1).... Involuntary, inactive enrollment. (c) (1) the Board (of Governors of the California State Bar Association) may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public .....

(2) In order to find that

the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing a substantial harm to the attorney's clients or the Public.

(B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evi-

dence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show there is no reasonable likelihood that that harm will reoccur or continue....

(C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(3) In the case of an enrolment under this subdivision, the underlying matter shall proceed on an expedited basis.

(4) The filing of a recommendation of disbarment after hearing or default, creates for purposes of this subdivision, a rebuttable presumption that the factors enumerated under paragraph 2) are

established. The presumption described in this section is one affecting the burden of proof as defined in section 605 of the Evidence Code.

(5) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public....

Section 6086.5. State Bar Court; establishment; powers; rules. The board of Governors shall establish

a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the Board of Governors pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of governors by this chapter, including those powers and that authority vested in the committees of, or established by the board, except as limited by rules of the board of governors within the scope of this chapter.

For the purposes of Section 6007, 6049, 6049.2, 6050, 6051, 6052,6077 (excluding the first

sentence), 6078, 6080, 6081, 6082, " board " includes the State Bar Court.

Nothing in this chapter shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure. The Executive Committee of the State Bar Court may adopt rules of practice of the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court.